Asylum Handbook

Judicial Law Clerk Library ❖ Seattle Immigration Court

Asylum Precedent in the Ninth Circuit

Country Index

Kenneth Josephson
Immigration Judge

Seattle Immigration Court

D.Ray Mantle
Attorney Advisor (2004-2005)
Seattle Immigration Court

Revised and updated in part by:
Cara D. Cutler
Attorney Advisor (2005-2006)
Elizabeth G. Daily
Attorney Advisor (2006-2007)
Erica Zieschang
Attorney Advisor (2007-2008)
Sarah K. Barr
Attorney Advisor (2008-2010)

Notations indicating "Affirmed" or "Not Affirmed" refer to whether the Ninth Circuit panel agreed with the BIA or IJ on all forms of refugee relief (i.e., upholding a denial of asylum but reversing on CAT is considered "Not Affirmed").

This manual is not intended to express the views or opinions of EOIR.

March 2010 edition.

Detailed Table of Contents

Mosa v. Rogers, 89 F.3d 601 (9th Cir. 1996)
Nasseri v. Moschorak, 34 F.3d 723 (9th Cir. 1994)

Albania

Affirmed

Not Affirmed

Belishta v. Ashcroft, 378 F.3d 1078 (9th Cir. 2004)

Algeria

Affirmed

Bellout v. Ashcroft, 363 F.3d 975 (9th Cir. 2004)

Not Affirmed

Argentina

Affirmed

Not Affirmed

Lanza v. Ashcroft, 389 F.3d 917 (9th Cir. 2004)

Armenia

Affirmed

Rostomian v. INS, 210 F.3d 1088 (9th Cir. 2000)

Not Affirmed

Baghdasaryan v. Holder, 592 F.3d 1018 (9th Cir. 2010)
Karapetyan v. Mukasey, 543 F.3d 1118 (9th Cir. 2008)
Grigoryan v. Mukasey, 515 F.3d 999 (9th Cir. 2008), *withdrawn*, 527 F.3d 791 (9th Cir. 2008)
Vatyan v. Mukasey, 508 F.3d 1179 (9th Cir. 2007)
Muradin v. Gonzales, 494 F.3d 1208 (9th Cir. 2007)
Movsisian v. Ashcroft, 395 F.3d 1095 (9th Cir. 2005)
Mamouzian v. Ashcroft, 390 F.3d 1129 (9th Cir. 2004)
Abovian v. INS, 219 F.3d 972 (9th Cir. 2000)
Avetova-Elisseva v. INS, 213 F.3d 1192 (9th Cir. 2000)
Yazitchian v. INS, 207 F.3d 1164 (9th Cir. 2000)
Mgoian v. INS, 184 F.3d 1029 (9th Cir. 1999)
Andriasian v. INS, 180 F.3d 1033 (9th Cir. 1999)

Azerbaijan

Affirmed

Rostomian v. INS, 210 F.3d 1088 (9th Cir. 2000)

Not Affirmed

Avetova-Elisseva v. INS, 213 F.3d 1192 (9th Cir. 2000)
Andriasian v. INS, 180 F.3d 1033 (9th Cir. 1999)

Bangladesh

Affirmed

Gomes v. Gonzales, 429 F.3d 1264 (9th Cir. 2005)

Not Affirmed

Ahmed v. Keisler, 504 F.3d 1183 (9th Cir. 2007)

Hasan v. Ashcroft, 380 F.3d 1114 (9th Cir. 2004)
Hoque v. Ashcroft, 367 F.3d 1190 (9th Cir. 2004)
Khan v. INS, 237 F.3d 1143 (9th Cir. 2001)

Bosnia-Herzegovina

Affirmed

Not Affirmed

Knezevic v. Ashcroft, 367 F.3d 1206 (9th Cir. 2004)
Vukmirovic v. Ashcroft, 362 F.3d 1247 (9th Cir. 2004)

Bulgaria

Affirmed

Donchev v. Mukasey, 553 F.3d 1206 (9th Cir. 2009)

Not Affirmed

Mihalev v. Ashcroft, 388 F.3d 722 (9th Cir. 2004)
Popova v. INS, 273 F.3d 1251 (9th Cir. 2001)
Konstantinova v. INS, 195 F.3d 528 (9th Cir. 1999)
Stoyanov v. INS, 172 F.3d 731 (9th Cir. 1999)
Stoyanov v. INS, 149 F.3d 1226 (9th Cir. 1998)

Burma

Affirmed

Not Affirmed

Khup v. Ashcroft, 376 F.3d 898 (9th Cir. 2004)

Cambodia

Affirmed

Kin v. Holder, _F.3d_, 2010 WL 547650 (9th Cir. 2010)
Cheo v. INS, 162 F.3d 1227 (9th Cir. 1998)

Not Affirmed

Im v. Gonzales, 497 F.3d 990 (9th Cir. 2007)

China

Affirmed

Lin v. Holder, 588 F.3d 981 (9th Cir. 2009)
Chen v. Mukasey, 524 F.3d 1028 (9th Cir. 2008)
He v. Gonzalez, 501 F.3d 1128 (9th Cir. 2007)
Gu v. Gonzales, 454 F.3d 1014 (9th Cir. 2006)
Huang v. Ashcroft, 390 F.3d 1118 (9th Cir. 2004)
Li v. Ashcroft, 378 F.3d 959 (9th Cir. 2004)
Wang v. INS, 352 F.3d 1250 (9th Cir. 2003)
Li v. INS, 92 F.3d 985 (9th Cir. 1996)

Not Affirmed

Li v. Holder, 559 F.3d 1096 (9th Cir. 2009)
Zhao v. Mukasey, 540 F.3d 1027 (9th Cir. 2008)
Zhu v. Mukasey, 537 F.3d 1034 (9th Cir. 2008)
Chen v. Mukasey, 527 F.3d 935 (9th Cir. 2008)

Huang v. Mukasey, 520 F.3d 1006 (9th Cir. 2008)
Tang v. Gonzales, 489 F.3d 987 (9th Cir. 2007)
Lin v. Gonzales, 472 F.3d 1131 (9th Cir. 2007)
Lin v. Gonzales, 473 F.3d 979 (9th Cir. 2007)
Lin v. Gonzales, 434 F.3d 1158 (9th Cir. 2006)
Zhou v. Gonzales, 437 F.3d 860 (9th Cir. 2006)
Quan v. Gonzales, 428 F.3d 883 (9th Cir. 2005)
Zhang v. Gonzales, 408 F.3d 1239 (9th Cir. 2005)
Qu v. Gonzales, 399 F.3d 1195 (9th Cir. 2005)
Zheng v. Ashcroft, 397 F.3d 1139 (9th Cir. 2005)
Zhang v. Ashcroft, 388 F.3d 713 (9th Cir. 2004)
Ding v. Ashcroft, 387 F.3d 1131 (9th Cir. 2004)
Lin v. Ashcroft, 377 F.3d 1014 (9th Cir. 2004), amending and superceding 356 F.3d 1027 (9th Cir. 2004)
Ge v. Ashcroft, 367 F.3d 1121 (9th Cir. 2004)
Chen v. Ashcroft, 362 F.3d 611 (9th Cir. 2004)
Guo v. Ashcroft, 361 F.3d 1194 (9th Cir. 2004)
Ma v. Ashcroft, 361 F.3d 553 (9th Cir. 2004)
Li v. Ashcroft, 356 F.3d 1153 (9th Cir. 2004)
Wang v. Ashcroft, 341 F.3d 1015 (9th Cir. 2003)
Zheng v. Ashcroft, 332 F.3d 1186 (9th Cir. 2003)
He v. Ashcroft, 328 F.3d 593 (9th Cir. 2003)

Colombia

Affirmed

Not Affirmed

Ochoa v. Gonzales, 406 F.3d 1166 (9th Cir. 2005)
Reyes-Guerrero v. INS, 192 F.3d 1241 (9th Cir. 1999)
Campos-Sanchez v. INS, 164 F.3d 448 (9th Cir. 1999)

Congo (Democratic Republic of Congo)

Affirmed

Not Affirmed

Kalubi v. Ashcroft, 364 F.3d 1134 (9th Cir. 2004)

Cuba

Affirmed

Not Affirmed

Rodriguez-Roman v. INS, 98 F.3d 416 (9th Cir. 1996)

Egypt

Affirmed

Ramadan v. Gonzales, 479 F.3d 646 (9th Cir. 2007), *pet for rhrg en banc denied*, 504 F.3d 973 (9th Cir. 2007)
Mansour v. Ashcroft, 390 F.3d 667 (9th Cir. 2004)

Not Affirmed

Morgan v. Mukasey, 529 F.3d 1202 (9th Cir. 2008)

Malty v. Ashcroft, 381 F.3d 942 (9th Cir. 2004)
Tawadrus v. Ashcroft, 364 F.3d 1099 (9th Cir. 2004)

El Salvador

Affirmed

Zetino v. Holder, _F.3d_, 2010 WL 555334 (9th Cir. 2010)
Santos-Lemus v. Mukasey, 542 F.3d 738 (9th Cir. 2008)
Arteaga v. Mukasey, 511 F.3d 940 (9th Cir. 2007)
Hernandez-Mezquita v. Ashcroft, 293 F.3d 1161 (9th Cir. 2002)
Molina-Morales v. INS, 237 F.3d 1048 (9th Cir. 2001)
Rivera-Moreno v. INS, 213 F.3d 481 (9th Cir. 2000)
Aguilar-Escobar v. INS, 136 F.3d 1240 (9th Cir. 1998)

Not Affirmed

Aguilar-Ramos v. Holder, 594 F.3d 701 (9th Cir. 2010)
Delgado v. Holder, 563 F.3d 863 (9th Cir. 2009)
Reyes-Reyes v. Ashcroft, 384 F.3d 782 (9th Cir. 2004)
Rodas-Mendoza v. INS, 246 F.3d 1237 (9th Cir. 2001)
Ernesto Navas v. INS, 217 F.3d 646 (9th Cir. 2000)
Leiva-Montalvo v. INS, 173 F.3d 749 (9th Cir. 1999)
Del Carmen Molina v. INS, 170 F.3d 1247 (9th Cir. 1999)

Eritrea

Affirmed

Zehatye v. Gonzales, 453 F.3d 1182 (9th Cir. 2006)

Not Affirmed

Nuru v. Gonzales, 404 F.3d 1207 (9th Cir. 2005)

Ethiopia

Affirmed

Desta v. Ashcroft, 365 F.3d 741 (9th Cir. 2004)
Belayneh v. INS, 213 F.3d 488 (9th Cir. 2000)

Not Affirmed

Mengstu v. Holder, 560 F.3d 1055 (9th Cir. 2009)
Tekle v. Mukasey, 533 F.3d 1044 (9th Cir. 2008)
Hadera v. Gonzales, 494 F.3d 1154 (9th Cir. 2007)
Abebe v. Gonzales, 432 F.3d 1037 (9th Cir. 2005)
Ali v. Ashcroft, 394 F.3d 780 (9th Cir. 2005)
Yeimane-Berhe v. Ashcroft, 393 F.3d 907 (9th Cir. 2004)
Kebede v. Ashcroft, 366 F.3d 808 (9th Cir. 2004)
Shoafera v. INS, 228 F.3d 1070 (9th Cir. 2000)

Fiji

Affirmed

Kumar v. Gonzales, 439 F.3d 520 (9th Cir. 2006)
Lata v. INS, 204 F.3d 1241 (9th Cir. 2000)
Kumar v. INS, 204 F.3d 931 (9th Cir. 2000)
Pal v. INS, 204 F.3d 935 (9th Cir. 2000)

Singh v. INS, 134 F.3d 962 (9th Cir. 1998)

Not Affirmed

Sinha v. Holder, 556 F.3d 774 (9th Cir. 2009)
Maharaj v. Gonzales, 450 F.3d 961 (9th Cir. 2006) (*en banc*)
Narayan v. Ashcroft, 384 F.3d 1065 (9th Cir. 2004)
Faruk v. Ashcroft, 378 F.3d 940 (9th Cir. 2004)
Lal v. INS, 268 F.3d 1148 (9th Cir. 2001)
Gafoor v. INS, 231 F.3d 645 (9th Cir. 2000)
Tagaga v. INS, 228 F.3d 1030 (9th Cir. 2000)
Chand v. INS, 222 F.3d 1066 (9th Cir. 2000)
Prasad v. INS, 101 F.3d 614 (9th Cir. 1996)
Surita v. INS, 95 F.3d 814 (9th Cir. 1996)
Singh v. INS, 94 F.3d 1353 (9th Cir. 1996)

France

Affirmed

Vang v. INS, 146 F.3d 1114 (9th Cir. 1998)
Yang v. INS, 79 F.3d 932 (9th Cir. 1996)

Not Affirmed

Siong v. INS, 376 F.3d 1030 (9th Cir. 2004)

Georgia

Affirmed

Not Affirmed

Melkonian v. Ashcroft, 320 F.3d 1061 (9th Cir. 2003)

Germany

Affirmed

Nahrvani v. Gonzales, 399 F.3d 1148 (9th Cir. 2005)

Not Affirmed

Mashiri v. Ashcroft, 383 F.3d 1112 (9th Cir. 2004)

Guatemala

Affirmed

Toj-Culpatan v. Holder, 588 F.3d 638 (9th Cir. 2009)
Barrios v. Holder, 567 F.3d 451 (9th Cir. 2009)
Martinez v. Holder, 557 F.3d 1059 (9th Cir. 2009)
Gonzalez-Hernandez v. Ashcroft, 336 F.3d 995 (9th Cir. 2003)
Alvarez-Santos v. INS, 332 F.3d 1245 (9th Cir. 2003)
Antonio-Martinez v. INS, 317 F.3d 1089 (9th Cir. 2003)
Molina-Estrada v. INS, 293 F.3d 1089 (9th Cir. 2002)
Pedro-Mateo v. INS, 224 F.3d 1147 (9th Cir. 2000)
Tecun-Florian v. INS, 207 F.3d 1107 (9th Cir. 2000)
Sebastian-Sebastian v. INS, 195 F.3d 504 (9th Cir. 1999)
Ortiz v. INS, 179 F.3d 1148 (9th Cir. 1999)

Not Affirmed

Miguel-Miguel v. Gonzales, 500 F.3d 941 (9th Cir. 2007)

Hernandez-Ortiz v. Gonzales, 496 F.3d 1042 (9th Cir. 2007)
Recinos de Leon v. Gonzales, 400 F.3d 1185 (9th Cir. 2005)
Camposeco-Montejo v. Ashcroft, 384 F.3d 814 (9th Cir. 2004)
Garcia-Martinez v. Ashcroft, 371 F.3d 1066 (9th Cir. 2004)
Lopez v. Ashcroft, 366 F.3d 799 (9th Cir. 2004)
Ventura v. INS, 317 F.3d 1003 (9th Cir. 2003)
Cano-Merida v. INS, 311 F.3d 960 (9th Cir. 2002)
Ruano v. Ashcroft, 301 F.3d 1155 (9th Cir. 2002)
Rios v. Ashcroft, 287 F.3d 895 (9th Cir. 2002)
Perez-Lastor v. INS, 208 F.3d 773 (9th Cir. 2000)
Chanchavac v. INS, 207 F.3d 584 (9th Cir. 2000)
Escobar-Grijalva v. INS, 206 F.3d 1331 (9th Cir. 2000)
Jacinto v. INS, 208 F.3d 725 (9th Cir. 2000)
Cordon-Garcia v. INS, 204 F.3d 985 (9th Cir. 2000)
Duarte de Guinac v. INS, 179 F.3d 1156 (9th Cir. 1999)
Ordonez v. INS, 137 F.3d 1120 (9th Cir. 1998)

Haiti

Affirmed

Not Affirmed

Brezilien v. Holder, 565 F.3d 1163 (9th Cir. 2009)
Doissaint v. Mukasey, 538 F.3d 1167 (9th Cir. 2008)
Desir v. Ilchert, 840 F.2d 723 (9th Cir. 1988)

Honduras

Affirmed

Ramos-Lopez v. Holder, 563 F.3d 855 (9th Cir. 2009)
Castro-Perez v. Gonzales, 409 F.3d 1069 (9th Cir. 2005)
Lainez-Ortiz v. INS, 96 F.3d 393 (9th Cir. 1996)

Not Affirmed

Ramos-Vasquez v. INS, 57 F.3d 857 (9th Cir. 1995)

India

Affirmed

Khan v. Holder, 584 F.3d 773 (9th Cir. 2009)
Ahir v. Mukasey, 527 F.3d 912 (9th Cir. 2008)
Goel v. Gonzales, 490 F.3d 735 (9th Cir. 2007)
Kohli v. Gonzales, 473 F.3d 1061 (9th Cir. 2007)
Kaur v. Gonzales, 418 F.3d 1061 (9th Cir. 2005)
Singh v. Ashcroft, 367 F.3d 1139 (9th Cir. 2004)
Singh v. Ashcroft, 361 F.3d 1152 (9th Cir. 2004)
Padash v. INS, 358 F.3d 1161 (9th Cir. 2004)
Singh v. Ashcroft, 351 F.3d 435 (9th Cir. 2003)
Malhi v. INS, 336 F.3d 989 (9th Cir. 2003)
Singh-Kaur v. INS, 183 F.3d 1147 (9th Cir. 1999)

Not Affirmed

Kaur v. Holder, 561 F.3d 957 (9th Cir. 2009)
Singh v. Gonzales, 491 F.3d 1019 (9th Cir. 2007)
Kumar v. Gonzales, 444 F.3d 1043 (9th Cir. 2006)
Singh v. Gonzales, 439 F.3d 1100 (9th Cir. 2006)
Bhasin v. Gonzales, 423 F.3d 977 (9th Cir. 2005)
Singh v. Gonzales, 403 F.3d 1081 (9th Cir. 2005)
Singh v. Ashcroft, 393 F.3d 903 (9th Cir. 2004)
Kaur v. Ashcroft, 388 F.3d 734 (9th Cir. 2004)
Cheema v. Ashcroft, 383 F.3d 848 (9th Cir. 2004)
Kaur v. Ashcroft, 379 F.3d 876 (9th Cir. 2004)
Singh v. Ashcroft, 367 F.3d 1182 (9th Cir. 2004)
Singh v. Ashcroft, 362 F.3d 1164 (9th Cir. 2004)
Singh v. Ashcroft, 301 F.3d 1109 (9th Cir. 2002)
Singh v. INS, 292 F.3d 1017 (9th Cir. 2002)
Kaur v. INS, 237 F.3d 1098 (9th Cir. 2001) (*as amended by* 249 F.3d 830 *on denial of reh'g*)
Kataria v. INS, 232 F.3d 1107 (9th Cir. 2000)
Shah v. INS, 220 F.3d 1062 (9th Cir. 2000)
Sidhu v. INS, 220 F.3d 1085 (9th Cir. 2000)
Maini v. INS, 212 F.3d 1167 (9th Cir. 2000)

Indonesia

Affirmed

Halim v. Holder, _F.3_, 2009 WL 5158237 (9th Cir. 2009)
Loho v. Mukasey, 531 F.3d 1016 (9th Cir. 2008)
Lolong v. Gonzales, 484 F.3d 1173 (9th Cir. 2007)

Not Affirmed

Tampubolon v. Holder, _F.3d_, 2010 WL 774310 (9th Cir. 2010)
Benyamin v. Holder, 579 F.3d 970 (9th Cir. 2009)
Wakkary v. Holder, 558 F.3d 1049 (9th Cir. 2009)
Sael v. Ashcroft, 386 F.3d 922 (9th Cir. 2004)

Iran

Affirmed

Najmabadi v. Holder, _F.3d_, 2010 WL 774252 (9th Cir. 2010)
Toufighi v. Mukasey, 510 F.3d 1059 (9th Cir. 2007), *amended*, 538 F.3d 988 (9th Cir. 2008)
Nahrvani v. Gonzales, 399 F.3d 1148 (9th Cir. 2005)
Padash v. INS, 358 F.3d 1161 (9th Cir. 2004)

Not Affirmed

Taslimi v. Holder, 590 F.3d 981 (9th Cir. 2010)
Cinapian v. Holder, 567 F.3d 1067 (9th Cir. 2009)
Khunaverdiants v. Mukasey, 548 F.3d 760 (9th Cir. 2008)
Hakopian v. Mukasey, 551 F.3d 843 (9th Cir. 2008)
Hosseini v. Gonzales, 471 F.3d 953 (9th Cir. 2007)
Jahed v. INS, 356 F.3d 991 (9th Cir. 2004)

Bandari v. INS, 227 F.3d 1160 (9th Cir. 2000)
Zahedi v. INS, 222 F.3d 1157 (9th Cir. 2000)

Iraq

Affirmed

Malkandi v. Mukasey, 544 F.3d 1029 (9th Cir. 2008)

Not Affirmed

Mousa v. Mukasey, 530 F.3d 1025 (9th Cir. 2008)
Hanna v. Keisler, 506 F.3d 933 (9th Cir. 2007)
Gulla v. Gonzales, 498 F.3d 911 (9th Cir. 2007) (Real ID Act)
Al-Saher v. INS, 268 F.3d 1143 (9th Cir. 2001) (*as amended by* 355 F.3d 1140 (9th Cir. 2004))
Al-Harbi v. INS, 242 F.3d 882 (9th Cir. 2001)

Israel

Affirmed

Khourassany v. INS, 208 F.3d 1096 (9th Cir. 2000)

Not Affirmed

Baballah v. Ashcroft, 367 F.3d 1067 (9th Cir. 2004) (*amending* 336 F.3d 995 (9th Cir. 2003) *on denial of reh'g*)

Jamaica

Affirmed

Not Affirmed

Bromfield v. Mukasey, 543 F.3d 1071 (9th Cir. 2008)

Kazakhstan

Affirmed

Parussimova v. Mukasey, 555 F.3d 734 (9th Cir. 2009) (*amended opinion issued, denying motion for rehearing*)

Not Affirmed

Kenya

Affirmed

Not Affirmed

Owino v. Holder, 575 F.3d 956 (9th Cir. 2009)
Li v. Keisler, 505 F.3d 913 (9th Cir. 2007)
Njuguna v. Ashcroft, 374 F.3d 765 (9th Cir. 2004)

Kuwait

Affirmed

Not Affirmed

El Himri v. Ashcroft, 378 F.3d 932 (9th Cir. 2004)

Laos

Affirmed

Vang v. INS, 146 F.3d 1114 (9th Cir. 1998)
Yang v. INS, 79 F.3d 932 (9th Cir. 1996)

Not Affirmed

Siong v. INS, 376 F.3d 1030 (9th Cir. 2004)
Vongsakdy v. INS, 171 F.3d 1203 (9th Cir. 1999)

Lebanon

Affirmed

Not Affirmed

Karouni v. Gonzales, 399 F.3d 1163 (9th Cir. 2005)

Lithuania

Affirmed

Kazlauskas v. INS, 46 F.3d 902 (9th Cir. 1995)

Not Affirmed

Mexico

Affirmed

Anaya-Ortiz v. Mukasey, 594 F.3d 673 (9th Cir. 2010)
Velasco-Cervantes v. Holder, 593 F.3d 975 (9th Cir. 2010)
Villegas v. Mukasey, 523 F.3d 984 (9th Cir. 2008)
Lemus-Galvan v. Mukasey, 518 F.3d 1081 (9th Cir. 2008)
Mendez-Gutierrez v. Gonzales, 444 F.3d 1168 (9th Cir. 2006)

Not Affirmed

Morales v. Gonzales, 478 F.3d 972 (9th Cir. 2007)
Ornelas-Chavez v. Gonzales, 458 F.3d 1052 (9th Cir. 2006)
Boer-Sedano v. Gonzales, 418 F.3d 1082 (9th Cir. 2005)
Mendez-Gutierrez v. Ashcroft, 340 F.3d 865 (9th Cir. 2003)
Aguirre-Cervantes v. INS, 242 F.3d 1169 (9th Cir. 2001) (*opinion vacated on reh'g en banc*, 273 F.3d 1220 (9th Cir. 2001) *and remanded for a stipulated reopening*)
Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000)

Morocco

Affirmed

Chebchoub v. INS, 257 F.3d 1038 (9th Cir. 2001)

Not Affirmed

Nepal

Affirmed

Tamang v. Holder, _F.3d_ 2010 WL 917202 (9th Cir. 2010)
Shrestha v. Holder, 590 F.3d 1034 (9th Cir. 2010)
Dhital v. Mukasey, 532 F.3d 1044 (9th Cir. 2008)

Not Affirmed

Nicaragua

Affirmed

Robleto-Pastora v. Holder, 591 F.3d 1051 (9th Cir. 2010)
Mejia-Paiz v. INS, 111 F.3d 720 (9th Cir. 1997)
Gutierrez-Centeno v. INS, 99 F.3d 1529 (9th Cir. 1996)

Not Affirmed

Vallecillo-Castillo v. INS, 121 F.3d 1237 (9th Cir. 1997)
Lopez-Galarza v. INS, 99 F.3d 954 (9th Cir. 1996)
Osorio v. INS, 99 F.3d 928 (9th Cir. 1996)
Rodriguez-Matamoros v. INS, 86 F.3d 158 (9th Cir. 1996)
Gonzalez v. INS, 82 F.3d 903 (9th Cir. 1996)

Nigeria

Affirmed

Unuakhaulu v. Ashcroft, 398 F.3d 1085 (9th Cir. 2005)

Not Affirmed

Tijani v. Holder, _F.3d_, 2010 WL 816973 (9th Cir. 2010)
Azanor v. Ashcroft, 364 F.3d 1013 (9th Cir. 2004)
Salaam v. INS, 229 F.3d 1234 (9th Cir. 2000)
Akinmade v. INS, 196 F.3d 951 (9th Cir. 1999)

Pakistan

Affirmed

Hakeem v. INS, 273 F.3d 812 (9th Cir. 2001)

Not Affirmed

Kaiser v. Ashcroft, 390 F.3d 653 (9th Cir. 2004)
Ladha v. INS, 215 F.3d 889 (9th Cir. 2000)

Peru

Affirmed

Miranda v. Gonzales, 441 F.3d 750 (9th Cir. 2006)
Cruz-Navarro v. INS, 232 F.3d 1024 (9th Cir. 2000)

Not Affirmed

Soto-Olarte v. Holder, 555 F.3d 1089 (9th Cir. 2009)
Canales-Vargas v. Gonzales, 441 F.3d 739 (9th Cir. 2006)
Cardenas v. INS, 294 F.3d 1062 (9th Cir. 2002)
Salazar-Paucar v. INS, 281 F.3d 1069 (9th Cir. 2002)
Vera-Valera v. INS, 147 F.3d 1036 (9th Cir. 1998) (*withdrawing and superseding* 123 F.3d 1302 (9th Cir. 1997) *on reh'g*)
Velarde v. INS, 140 F.3d 1305 (9th Cir. 1998)
Meza-Manay v. INS, 139 F.3d 759 (9th Cir. 1998)
Gonzales-Neyra v. INS, 122 F.3d 1293 (9th Cir. 1997) (*as amended by* 133 F.3d 726 (9th Cir. 1998)

Philippines

Affirmed

Soriano v. Holder, 569 F.3d 1162 (9th Cir. 2009)
Rivera v. Mukasey, 508 F.3d 1271 (9th Cir. 2007)
Valderrama v. INS, 260 F.3d 1083 (9th Cir. 2001)
Ochave v. INS, 254 F.3d 859 (9th Cir. 2001)
Pondoc Hernaez v. INS, 244 F.3d 752 (9th Cir. 2001)

Not Affirmed

Silaya v. Mukasey, 524 F.3d 1066 (9th Cir. 2008)

Marcos v. Gonzales, 410 F.3d 1112 (9th Cir. 2005)
Deloso v. Ashcroft, 393 F.3d 858 (9th Cir. 2005)
Mendoza Manimbao v. Ashcroft, 329 F.3d 655 (9th Cir. 2003)
Mejia v. Ashcroft, 298 F.3d 873 (9th Cir. 2002)
Agbuya v. INS, 241 F.3d 1224 (9th Cir. 2001)
Lim v. INS, 224 F.3d 929 (9th Cir. 2000)
Colmenar v. INS, 210 F.3d 967 (9th Cir. 2000)
Grava v. INS, 205 F.3d 1177 (9th Cir. 2000)
Tarubac v. INS, 182 F.3d 1114 (9th Cir. 1999)
Borja v. INS, 175 F.3d 732 (9th Cir. 1999)
Briones v. INS, 175 F.3d 727 (9th Cir. 1999)
Garrovillas v. INS, 156 F.3d 1010 (9th Cir. 1998)

Romania

Affirmed

Dinu v. Ashcroft, 372 F.3d 1041 (9th Cir. 2004)
Andreiu v. Ashcroft, 253 F.3d 477 (9th Cir. 2001) (*en banc reh'g of* 223 F.3d 1111 (9th Cir. 2001))
Marcu v. INS, 147 F.3d 1078 (9th Cir. 1998)

Not Affirmed

Cosa v. Mukasey, 543 F.3d 1066 (9th Cir. 2008)
Circu v. Gonzales, 450 F.3d 990 (9th Cir. 2006) (*en banc*)
Gui v. Ashcroft, 280 F.3d 1217 (9th Cir. 2002)

Russia

Kozulin v. INS, 218 F.3d 1112 (9th Cir. 2000)

Affirmed

Kozulin v. INS, 218 F.3d 1112 (9th Cir. 2000)
Bolshakov v. INS, 133 F.3d 1279 (9th Cir. 1998)

Not Affirmed

Smolniakova v. Gonzales, 422 F.3d 1037 (9th Cir. 2005)
Krotova v. Gonzales, 416 F.3d 1080 (9th Cir. 2005)
Zolotukhin v. Gonzales, 417 F.3d 1073 (9th Cir. 2005)
Gonzales v. Tchoukhrova, 127 S. Ct. 57 (2006), *vacating and remanding* 404 F.3d 1181 (9th Cir. 2005)
Chouchkov v. INS, 220 F.3d 1077 (9th Cir. 2000)
Avetova-Elisseva v. INS, 213 F.3d 1192 (9th Cir. 2000)
Pitcherskaia v. INS, 118 F.3d 641 (9th Cir. 1997)

Senegal

Affirmed

Not Affirmed

Fakhry v. Mukasey, 524 F.3d 1057 (9th Cir. 2008)
Ndom v. Ashcroft, 384 F.3d 743 (9th Cir. 2004)

Serbia and Montenegro

Affirmed

Kasnecovic v. Gonzales, 400 F.3d 812 (9th Cir. 2005)

Not Affirmed

Hoxha v. Ashcroft, 319 F.3d 1179 (9th Cir. 2003)

Sierra Leone

Affirmed

Sillah v. Holder, 320 Fed.Appx. 503 (9th Cir. 2009)

Not Affirmed

Sowe v. Mukasey, 538 F.3d 1281 (9th Cir. 2008)

Somalia

Affirmed

Aden v. Holder, 589 F.3d 1040 (9th Cir. 2009)

Not Affirmed

Jibril v. Gonzales, 423 F.3d 1129 (9th Cir. 2005)
Ali v. Ashcroft, 421 F.3d 795 (9th Cir. 2005)
Mohamed v. Gonzales, 400 F.3d 785 (9th Cir. 2005)
Ali v. Ashcroft, 394 F.3d 780 (9th Cir. 2005)
Shire v. Ashcroft, 388 F.3d 1288 (9th Cir. 2004)
Farah v. Ashcroft, 348 F.3d 1153 (9th Cir. 2003)

South Africa

Affirmed

Gonzales v. Thomas, 547 U.S. 183 (2006) (per CURIAM), *rev'g* 409 F.3d 1177 (9th Cir. 2005) (*en banc reh'g of* 359 F.3d 1169 (9th Cir. 2004))
Gormley v. Ashcroft, 364 F.3d 1172 (9th Cir. 2004)

Not Affirmed

Sri Lanka

Affirmed

Don v. Gonzales, 476 F.3d 738 (9th Cir. 2007)

Not Affirmed

Suntharalinkam v. Gonzales, 506 F.3d 822 (9th Cir. 2007)
Nadarajah v. Gonzales, 443 F.3d 1069 (9th Cir. 2006)
Thangaraja v. Gonzales, 428 F.3d 870 (9th Cir. 2005)
Arulampalam v. Ashcroft, 353 F.3d 679 (9th Cir. 2003)
Kankamalage v. INS, 335 F.3d 858 (9th Cir. 2003)
Paramasamy v. Ashcroft, 295 F.3d 1047 (9th Cir. 2002)
Kamalthas v. INS, 251 F.3d 1279 (9th Cir. 2001)
Ratnam v. INS, 154 F.3d 990 (9th Cir. 1998)

Sudan

Affirmed

Not Affirmed

Al-Mousa v. Mukasey, 516 F.3d 738 (9th Cir. 2008), *withdrawn*, No. 06-70638, slip op (9th Cir. Sept. 22, 2008)
Kalouma v. Gonzales, 512 F.3d 1073 (9th Cir. 2008), *modifying* 499 F.3d 1090 (9th Cir. 2007) *and denying any further motion for reconsideration*

Case Index

Al-Harbi v. INS, 242 F.3d 882 (9th Cir. 2001)
Ali v. Ashcroft, 346 F.3d 873 (9th Cir. 2003)
Ali v. Ashcroft, 394 F.3d 780 (9th Cir. Jan. 19, 2005)
Almaghzar v. Gonzales, 457 F.3d 915 (9th Cir. 2006)
Al-Saher v. INS, 268 F.3d 1143 (9th Cir. 2001) (*as amended by* 355 F.3d 1140 (9th Cir. 2004))
Alvarez Santos v. INS, 332 F.3d 1245 (9th Cir. 2003)
Anaya-Ortiz v. Mukasey, 594 F.3d 673 (9th Cir. 2010)
Andreiu v. Ashcroft, 253 F.3d 477 (9th Cir. 2001)
Andriasian v. INS, 180 F.3d 1033 (9th Cir. 1999)
Antonio-Martinez v. INS, 317 F.3d 1089 (9th Cir. 2003)
Arteaga v. Mukasey, 511 F.3d 940 (9th Cir. 2007)
Arulampalam v. Ashcroft, 353 F.3d 679 (9th Cir. 2003)
Avetova-Elisseva v. INS, 213 F.3d 1192 (9th Cir. 2000)
Azanor v. Ashcroft, 364 F.3d 1013 (9th Cir. 2004)
Baballah v. Ashcroft, 367 F.3d 1067 (9th Cir. 2004) (*amending* 336 F.3d 995 (9th Cir. 2003) *on denial of reh'g*)
Baghdasaryan v. Holder, 592 F.3d 1018 (9th Cir. 2010)
Bandari v. INS, 227 F.3d 1160 (9th Cir. 2000)
Barrios v. Holder, 567 F.3d 451 (9th Cir. 2009)
Belayneh v. INS, 213 F.3d 488 (9th Cir. 2000)
Belishta v. Ashcroft, 378 F.3d 1078 (9th Cir. 2004)
Bellout v. Ashcroft, 363 F.3d 975 (9th Cir. 2004)
Benyamin v. Holder, 579 F.3d 970 (9th Cir. 2009)
Bhasin v. Gonzales, 423 F.3d 977 (9th Cir. 2005)
Boer-Sedano v. Gonzales, 418 F.3d 1082 (9th Cir. 2005)
Bolshakov v. INS, 133 F.3d 1279 (9th Cir. 1998)
Borja v. INS, 175 F.3d 732 (9th Cir. 1999)
Brezilien v. Holder, 565 F.3d 1163 (9th Cir. 2009)
Briones v. INS, 175 F.3d 727 (9th Cir. 1999)
Bromfield v. Mukasey, 543 F.3d 1071 (9th Cir. 2008)
Camposeco-Montejo v. Ashcroft, 384 F.3d 814 (9th Cir. 2004)
Campos-Sanchez v. INS, 164 F.3d 448 (9th Cir. 1999)
Canales-Vargas v. Gonzales, 441 F.3d 739 (9th Cir. 2006)
Cano-Merida v. INS, 311 F.3d 960 (9th Cir. 2002)
Cardenas v. INS, 294 F.3d 1062 (9th Cir. 2002)
Castro-Perez v. Gonzales, 409 F.3d 1069 (9th Cir. 2005)
Chanchavac v. INS, 207 F.3d 584 (9th Cir. 2000)
Chand v. INS, 222 F.3d 1066 (9th Cir. 2000)
Chebchoub v. INS, 257 F.3d 1038 (9th Cir. 2001)
Cheema v. Ashcroft, 383 F.3d 848 (9th Cir. 2004)
Chen v. Ashcroft, 362 F.3d 611 (9th Cir. 2004)
Chen v. Mukasey, 524 F.3d 1028 (9th Cir. 2008)
Chen v. Mukasey, 527 F.3d 935 (9th Cir. 2008)
Cheo v. INS, 162 F.3d 1227 (9th Cir. 1998)

Chouchkov v. INS, 220 F.3d 1077 (9th Cir. 2000)
Cinapian v. Holder, 567 F.3d 1067 (9th Cir. 2009)
Circu v. Gonzales, 450 F.3d 990 (9th Cir. 2006) (*en banc*)
Colmenar v. INS, 210 F.3d 967 (9th Cir. 2000)
Cordon-Garcia v. INS, 204 F.3d 985 (9th Cir. 2000)
Cosa v. Mukasey, 543 F.3d 1066 (9th Cir. 2008)
Cruz-Navarro v. INS, 232 F.3d 1024 (9th Cir. 2000)
Del Carmen Molina v. INS, 170 F.3d 1247 (9th Cir. 1999)
Delgado v. Holder, 563 F.3d 863 (9th Cir. 2009)
Deloso v. Ashcroft, 393 F.3d 858 (9th Cir. 2005)
Desir v. Ilchert, 840 F.2d 723 (9th Cir. 1988)
Desta v. Ashcroft, 365 F.3d 741 (9th Cir. 2004)
Dhital v. Mukasey, 532 F.3d 1044 (9th Cir. 2008)
Ding v. Ashcroft, 387 F.3d 1131 (9th Cir. 2004)
Dinu v. Ashcroft, 372 F.3d 1041 (9th Cir. 2004)
Doissaint v. Mukasey, 538 F.3d 1167 (9th Cir. 2008)
Don v. Gonzales, 476 F.3d 738 (9th Cir. 2007)
Donchev v. Mukasey, 553 F.3d 1206 (9th Cir. 2009)
Duarte de Guinac v. INS, 179 F.3d 1156 (9th Cir. 1999)
Dzyuba v. Mukasey, 540 F.3d 955 (9th Cir. 2008)
El Himri v. Ashcroft, 378 F.3d 932 (9th Cir. 2004)
Ernesto Navas v. INS, 217 F.3d 646 (9th Cir. 2000)
Escobar-Grijalva v. INS, 206 F.3d 1331 (9th Cir. 2000)
Fakhry v. Mukasey, 524 F.3d 1057 (9th Cir. 2008)
Farah v. Ashcroft, 348 F.3d 1153 (9th Cir. 2003)
Faruk v. Ashcroft, 378 F.3d 940 (9th Cir. 2004)
Fedunyak v. Gonzales, 477 F.3d 1126 (9th Cir. 2007)
Gafoor v. INS, 231 F.3d 645 (9th Cir. 2000)
Garcia-Martinez v. Ashcroft, 371 F.3d 1066 (9th Cir. 2004)
Garrovillas v. INS, 156 F.3d 1010 (9th Cir. 1998)
Ge v. Ashcroft, 367 F.3d 1121 (9th Cir. 2004)
Goel v. Gonzales, 490 F.3d 735 (9th Cir. 2007)
Gomes v. Gonzales, 429 F.3d 1264 (9th Cir. 2005)
Gonzales v. Tchoukhrova, 127 S. Ct. 57 (2006)
Gonzales-Neyra v. INS, 122 F.3d 1293 (9th Cir. 1997) (*as amended by* 133 F.3d 726 (9th Cir. 1998)
Gonzalez v. INS, 82 F.3d 903 (9th Cir. 1996)
Gonzalez-Hernandez v. Ashcroft, 336 F.3d 995 (9th Cir. 2003)
Gormley v. Ashcroft, 364 F.3d 1172 (9th Cir. 2004)
Grava v. INS, 205 F.3d 1177 (9th Cir. 2000)
Gu v. Gonzales, 454 F.3d 1014 (9th Cir. 2006)
Gui v. Ashcroft, 280 F.3d 1217 (9th Cir. 2002)
Gulla v. Gonzales, 498 F.3d 911 (9th Cir. 2007)
Guo v. Ashcroft, 361 F.3d 1194 (9th Cir. 2004)
Gutierrez-Centeno v. INS, 99 F.3d 1529 (9th Cir. 1996)

Hadera v. Gonzales, 494 F.3d 1154 (9th Cir. 2007)
Hakeem v. INS, 273 F.3d 812 (9th Cir. 2001)
Hakopian v. Mukasey, 551 F.3d 843 (9th Cir. 2008)
Halaim v. INS, 358 F.3d 1128 (9th Cir. 2004)
Halim v. Holder, _F.3_, 2009 WL 5158237 (9th Cir. 2009)
Hamoui v. Ashcroft, 389 F.3d 821 (9th Cir. 2004)
Hanna v. Keisler, 506 F.3d 933 (9th Cir. 2007)
Hasan v. Ashcroft, 380 F.3d 1114 (9th Cir. 2004)
He v. Ashcroft, 328 F.3d 593 (9th Cir. 2003)
Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000)
Hernandez-Ortiz v. Gonzales, 496 F.3d 1042 (9th Cir. 2007)
Hoque v. Ashcroft, 367 F.3d 1190 (9th Cir. 2004)
Hosseini v. Gonzales, 471 F.3d 953 (9th Cir. 2007)
Hoxha v. Ashcroft, 319 F.3d 1179 (9th Cir. 2003)
Huang v. Ashcroft, 390 F.3d 1118 (9th Cir. 2004)
Huang v. Mukasey, 520 F.3d 1006 (9th Cir. 2008)
Husyev v. Mukasey, 528 F.3d 1172 (9th Cir. 2008)
Im v. Gonzales, 497 F.3d 990 (9th Cir. 2007), *withdrawn,* 522 F.3d 966 (9th Cir. 2008)
Jacinto v. INS, 208 F.3d 725 (9th Cir. 2000)
Jahed v. INS, 356 F.3d 991 (9th Cir. 2004)
Jibril v. Gonzales, 423 F.3d 1129 (9th Cir. 2005)
Kaiser v. Ashcroft, 390 F.3d 653 (9th Cir. 2004)
Kalouma v. Gonzales, 512 F.3d 1073 (9th Cir. 2008), *modifying* 499 F.3d 1090 (9th Cir. 2007) *and denying any further motion for reconsideration*
Kalubi v. Ashcroft, 364 F.3d 1134 (9th Cir. 2004)
Kamalthas v. INS, 251 F.3d 1279 (9th Cir. 2001)
Kankamalage v. INS, 335 F.3d 858 (9th Cir. 2003)
Karapetyan v. Mukasey, F.3d, 2008 WL 4210543 (9th Cir. 2008)
Karouni v. Gonzales, 399 F.3d 1163 (9th Cir. 2005)
Kasnecovic v. Gonzales, 400 F.3d 812 (9th Cir. Mar. 11, 2005)
Kataria v. INS, 232 F.3d 1107 (9th Cir. 2000)
Kaur v. Ashcroft, 379 F.3d 876 (9th Cir. 2004)
Kaur v. Ashcroft, 388 F.3d 734 (9th Cir. 2004)
Kaur v. Gonzales, 418 F.3d 1061 (9th Cir. 2005)
Kaur v. Holder, 561 F.3d 957 (9th Cir. 2009)
Kaur v. INS, 237 F.3d 1098 (9th Cir. 2001)
Kazlauskas v. INS, 46 F.3d 902 (9th Cir. 1995)
Kebede v. Ashcroft, 366 F.3d 808 (9th Cir. 2004)
Khan v. Holder, 584 F.3d 773 (9th Cir. 2009)
Khan v. INS, 237 F.3d 1143 (9th Cir. 2001)
Khourassany v. INS, 208 F.3d 1096 (9th Cir. 2000)
Khunaverdiants v. Mukasey, 548 F.3d 760 (9th Cir. 2008)
Khup v. Ashcroft, 376 F.3d 898 (9th Cir. 2004)
Kin v. Holder, _F.3d_, 2010 WL 547650 (9th Cir. 2010)
Knezevic v. Ashcroft, 367 F.3d 1206 (9th Cir. 2004)

Kohli v. Gonzales, 473 F.3d 1061 (9th Cir. 2007)
Konstantinova v. INS, 195 F.3d 528 (9th Cir. 1999)
Korablina v. INS, 158 F.3d 1038 (9th Cir. 1998)
Kozulin v. INS, 218 F.3d 1112 (9th Cir. 2000)
Krotova v. Gonzales, 416 F.3d 1080 (9th Cir. 2005)
Kumar v. Gonzales, 439 F.3d 520 (9th Cir. 2006)
Kumar v. Gonzales, 444 F.3d 1043 (9th Cir. 2006)
Kumar v. INS, 204 F.3d 931 (9th Cir. 2000)
Ladha v. INS, 215 F.3d 889 (9th Cir. 2000)
Lainez-Ortiz v. INS, 96 F.3d 393 (9th Cir. 1996)
Lal v. INS, 268 F.3d 1148 (9th Cir. 2001)
Lanza v. Ashcroft, 389 F.3d 917 (9th Cir. 2004)
Lata v. INS, 204 F.3d 1241 (9th Cir. 2000)
Leiva-Montalvo v. INS, 173 F.3d 749 (9th Cir. 1999)
Lemus-Galvan v. Mukasey, 518 F.3d 1081 (9th Cir. 2008)
Li v. Ashcroft, 356 F.3d 1153 (9th Cir. 2004)
Li v. Ashcroft, 378 F.3d 959 (9th Cir. 2004)
Li v. Holder, 559 F.3d 1096 (9th Cir. 2009)
Li v. INS, 92 F.3d 985 (9th Cir. 1996)
Li v. Keisler, 505 F.3d 913 (9th Cir. 2007)
Lim v. INS, 224 F.3d 929 (9th Cir. 2000)
Lin v. Ashcroft, 377 F.3d 1014 (9th Cir. 2004)
Lin v. Gonzales, 434 F.3d 1158 (9th Cir. 2006)
Lin v. Gonzales, 472 F.3d 1131 (9th Cir. 2007)
Lin v. Gonzales, 473 F.3d 979 (9th Cir. 2007)
Lin v. Holder, 588 F.3d 981 (9th Cir. 2009)
Loho v. Mukasey, 531 F.3d 1016 (9th Cir. 2008)
Lolong v. Gonzales, 484 F.3d 1173 (9th Cir. 2007) (*en banc*)
Lopez v. Ashcroft, 366 F.3d 799 (9th Cir. 2004)
Lopez-Galarza v. INS, 99 F.3d 954 (9th Cir. 1996)
Ma v. Ashcroft, 361 F.3d 553 (9th Cir. 2004)
Maharaj v. Gonzales, 450 F.3d 961 (9th Cir. 2006) (*en banc*)
Maini v. INS, 212 F.3d 1167 (9th Cir. 2000)
Malhi v. INS, 336 F.3d 989 (9th Cir. 2003)
Malkandi v. Mukasey, 544 F.3d 1029 (9th Cir. 2008)
Malty v. Ashcroft, 381 F.3d 942 (9th Cir. 2004)
Mamouzian v. Ashcroft, 390 F.3d 1129 (9th Cir. 2004)
Mamouzian v. Ashcroft, 390 F.3d 1129 (9th Cir. 2004)
Mansour v. Ashcroft, 390 F.3d 667 (9th Cir. 2004)
Marcos v. Gonzales, 410 F.3d 1112 (9th Cir. 2005)
Marcu v. INS, 147 F.3d 1078 (9th Cir. 1998)
Martinez v. Holder, 557 F.3d 1059 (9th Cir. 2009)
Mashiri v. Ashcroft, 383 F.3d 1112 (9th Cir. 2004)
Mejia v. Ashcroft, 298 F.3d 873 (9th Cir. 2002)

Mejia-Paiz v. INS, 111 F.3d 720 (9th Cir. 1997)
Melkonian v. Ashcroft, 320 F.3d 1061 (9th Cir. 2003)
Mendez-Gutierrez v. Ashcroft, 340 F.3d 865 (9th Cir. 2003)
Mendoza Manimbao v. Ashcroft, 329 F.3d 655 (9th Cir. 2003)
Mengstu v. Holder, 560 F.3d 1055 (9th Cir. 2009)
Meza-Manay v. INS, 139 F.3d 759 (9th Cir. 1998)
Mgoian v. INS, 184 F.3d 1029 (9th Cir. 1999)
Miguel-Miguel v. Gonzales, 500 F.3d 941 (9th Cir. 2007)
Mihalev v. Ashcroft, 388 F.3d 722 (9th Cir. 2004)
Miranda v. Gonzales, 441 F.3d 750 (9th Cir. 2006)
Mohamed v. Gonzales, 400 F.3d 785 (9th Cir. 2005)
Molina-Estrada v. INS, 293 F.3d 1089 (9th Cir. 2002)
Molina-Morales v. INS, 237 F.3d 1048 (9th Cir. 2001)
Morales v. Gonzales, 478 F.3d 972 (9th Cir. 2007)
Morgan v. Mukasey, 529 F.3d 1202 (9th Cir. 2008)
Mosa v. Rogers, 89 F.3d 601 (9th Cir. 1996)
Mousa v. Mukasey, 530 F.3d 1025 (9th Cir. 2008)
Muradin v. Gonzales, 494 F.3d 1208 (9th Cir. 2007)
Nadarajah v. Gonzales, 443 F.3d 1069 (9th Cir. 2006)
Nagoulko v. INS, 333 F.3d 1012 (9th Cir. 2003)
Nahrvani v. Gonzales, 399 F.3d 1148 (9th Cir. 2005)
Najmabadi v. Holder, _F.3d_, 2010 WL 774252 (9th Cir. 2010)
Narayan v. Ashcroft, 384 F.3d 1065 (9th Cir. 2004)
Nasseri v. Moschorak, 34 F.3d 723 (9th Cir. 1994)
Ndom v. Ashcroft, 384 F.3d 743 (9th Cir. 2004)
Nehad v. Mukasey, 535 F.3d 962 (9th Cir. 2008)
Njuguna v. Ashcroft, 374 F.3d 765 (9th Cir. 2004)
Nuru v. Gonzales, 404 F.3d 1207 (9th Cir. 2005)
Ochave v. INS, 254 F.3d 859 (9th Cir. 2001)
Ochoa v. Gonzales, 406 F.3d 1166 (9th Cir. 2005)
Ordonez v. INS, 137 F.3d 1120 (9th Cir. 1998)
Ornelas-Chavez v. Gonzales, 458 F.3d 1052 (9th Cir. 2006)
Ortiz v. INS, 179 F.3d 1148 (9th Cir. 1999)
Osorio v. INS, 99 F.3d 928 (9th Cir. 1996)
Owino v. Holder, 572 F.3d 780 (9th Cir. 2009)
Padash v. INS, 358 F.3d 1161 (9th Cir. 2004)
Pal v. INS, 204 F.3d 935 (9th Cir. 2000)
Paramasamy v. Ashcroft, 295 F.3d 1047 (9th Cir. 2002)
Parussimova v. Mukasey, 555 F.3d 734 (9th Cir. 2009) (*amended opinion issued, denying motion for rehearing*)
Pedro-Mateo v. INS, 224 F.3d 1147 (9th Cir. 2000)
Perez-Lastor v. INS, 208 F.3d 773 (9th Cir. 2000)
Pitcherskaia v. INS, 118 F.3d 641 (9th Cir. 1997)
Pondoc Hernaez v. INS, 244 F.3d 752 (9th Cir. 2001)
Popova v. INS, 273 F.3d 1251 (9th Cir. 2001)

Prasad v. INS, 101 F.3d 614 (9th Cir. 1996)
Qu v. Gonzales, 399 F.3d 1195 (9th Cir. Mar. 8, 2005)
Quan v. Gonzales, 428 F.3d 883 (9th Cir. 2005)
Ramadan v. Gonzales, 479 F.3d 646 (9th Cir. 2007), *pet for rhrg en banc denied,* 504 F.3d 973 (9th Cir. 2007)
Ramos-Lopez v. Holder, 563 F.3d 855 (9th Cir. 2009)
Ramos-Vasquez v. INS, 57 F.3d 857 (9th Cir. 1995)
Ratnam v. INS, 154 F.3d 990 (9th Cir. 1998)
Recinos de Leon v. Gonzales, 400 F.3d 1185 (9th Cir. 2005)
Reyes-Guerrero v. INS, 192 F.3d 1241 (9th Cir. 1999)
Reyes-Reyes v. Ashcroft, 384 F.3d 782 (9th Cir. 2004)
Rios v. Ashcroft, 287 F.3d 895 (9th Cir. 2002)
Rivera v. Mukasey, 508 F.3d 1271 (9th Cir. 2007)
Rivera-Moreno v. INS, 213 F.3d 481 (9th Cir. 2000)
Robleto-Pastora v. Holder, 591 F.3d 1051 (9th Cir. 2010)
Rodas-Mendoza v. INS, 246 F.3d 1237 (9th Cir. 2001)
Rodriguez-Matamoros v. INS, 86 F.3d 158 (9th Cir. 1996)
Rodriguez-Roman v. INS, 98 F.3d 416 (9th Cir. 1996)
Rostomian v. INS, 210 F.3d 1088 (9th Cir. 2000)
Ruano v. Ashcroft, 301 F.3d 1155 (9th Cir. 2002)
Sael v. Ashcroft, 386 F.3d 922 (9th Cir. 2004)
Sagaydak v. Gonzales, 405 F.3d 1035 (9th Cir. 2005)
Salaam v. INS, 229 F.3d 1234 (9th Cir. 2000)
Salazar-Paucar v. INS, 281 F.3d 1069 (9th Cir. 2002) (*amended on denial of reh'g by* 290 F.3d 964 (9th Cir. 2002)
Santos-Lemus v. Mukasey, 542 F.3d 738 (9th Cir. 2008)
Sebastian-Sebastian v. INS, 195 F.3d 504 (9th Cir. 1999)
Shah v. INS, 220 F.3d 1062 (9th Cir. 2000)
Shire v. Ashcroft, 388 F.3d 1288 (9th Cir. 2004)
Shoafera v. INS, 228 F.3d 1070 (9th Cir. 2000)
Shrestha v. Holder, 590 F.3d 1034 (9th Cir. 2010)
Sidhu v. INS, 220 F.3d 1085 (9th Cir. 2000)
Silaya v. Mukasey, 524 F.3d 1066 (9th Cir. 2008)
Sillah v. Holder, 320 Fed.Appx. 503 (9th Cir. 2009)
Singh v. Ashcroft, 301 F.3d 1109 (9th Cir. 2002)
Singh v. Ashcroft, 351 F.3d 435 (9th Cir. 2003)
Singh v. Ashcroft, 361 F.3d 1152 (9th Cir. 2004)
Singh v. Ashcroft, 362 F.3d 1164 (9th Cir. 2004) (*amending and superseding* 340 F.3d 802 *on denial of reh'g*)
Singh v. Ashcroft, 367 F.3d 1139 (9th Cir. 2004)
Singh v. Ashcroft, 367 F.3d 1182 (9th Cir. 2004)
Singh v. Ashcroft, 393 F.3d 903 (9th Cir. 2004)
Singh v. Gonzales, 403 F.3d 1081 (9th Cir. 2005)
Singh v. Gonzales, 439 F.3d 1100 (9th Cir. 2006)
Singh v. Gonzales, 491 F.3d 1019 (9th Cir. 2007)

Singh v. INS, 94 F.3d 1353 (9th Cir. 1996)
Singh v. INS, 134 F.3d 962 (9th Cir. 1998)
Singh v. INS, 292 F.3d 1017 (9th Cir. 2002)
Singh-Kaur v. INS, 183 F.3d 1147 (9th Cir. 1999)
Sinha v. Holder, 556 F.3d 774 (9th Cir. 2009)
Siong v. INS, 376 F.3d 1030 (9th Cir. 2004)
Smolniakova v. Gonzales, 422 F.3d 1037 (9th Cir. 2005)
Soriano v. Holder, 569 F.3d 1162 (9th Cir. 2009)
Soto-Olarte v. Holder, 555 F.3d 1089 (9th Cir. 2009)
Sowe v. Mukasey, 538 F.3d 1281 (9th Cir. 2008)
Stoyanov v. INS, 149 F.3d 1226 (9th Cir. 1998)
Stoyanov v. INS, 172 F.3d 731 (9th Cir. 1999)
Suntharalinkam v. Gonzales, 506 F.3d 822 (9th Cir. 2007)
Surita v. INS, 95 F.3d 814 (9th Cir. 1996)
Tagaga v. INS, 228 F.3d 1030 (9th Cir. 2000)
Taha v. Ashcroft, 389 F.3d 800 (9th Cir. 2004)
Tamang v. Holder, _F.3d_ 2010 WL 917202 (9th Cir. 2010)
Tampubolon v. Holder, _F.3d_, 2010 WL 774310 (9th Cir. 2010)
Tang v. Gonzales, 489 F.3d 987 (9th Cir. 2007)
Tarubac v. INS, 182 F.3d 1114 (9th Cir. 1999)
Taslimi v. Holder, 590 F.3d 981 (9th Cir. 2009)
Tawadrus v. Ashcroft, 364 F.3d 1099 (9th Cir. 2004)
Tecun-Florian v. INS, 207 F.3d 1107 (9th Cir. 2000)
Tekle v. Mukasey, 533 F.3d 1044 (9th Cir. 2008)
Thangaraja v. Gonzales, 428 F.3d 870 (9th Cir. 2005)
Tijani v. Holder, _F.3d_, 2010 WL 816973 (9th Cir. 2010)
Toj-Culpatan v. Holder, 588 F.3d 638 (9th Cir. 2009)
Toufighi v. Mukasey, 510 F.3d 1059 (9th Cir. 2007), *amended*, 538 F.3d 988 (9th Cir. 2008)
Unuakhaulu v. Ashcroft, 398 F.3d 1085 (9th Cir. 2005) (*amending and superseding* 392 F.3d 1024)
Valderrama v. INS, 260 F.3d 1083 (9th Cir. 2001)
Vallecillo-Castillo v. INS, 121 F.3d 1237 (9th Cir. 1997)
Vang v. INS, 146 F.3d 1114 (9th Cir. 1998)
Vang v. INS, 146 F.3d 1114 (9th Cir. 1998)
Vatyan v. Mukasey, 508 F.3d 1179 (9th Cir. 2007)
Velarde v. INS, 140 F.3d 1305 (9th Cir. 1998)
Velasco-Cervantes v. Holder, 593 F.3d 975 (9th Cir. 2010)
Ventura v. INS, 317 F.3d 1003 (9th Cir. 2003)
Vera-Valera v. INS, 147 F.3d 1036 (9th Cir. 1998) (*withdrawing and superseding* 123 F.3d 1302 (9th Cir. 1997) *on reh'g*)
Villegas v. Mukasey, 523 F.3d 984 (9th Cir. 2008)
Vongsakdy v. INS, 171 F.3d 1203 (9th Cir. 1999)
Vukmirovic v. Ashcroft, 362 F.3d 1247 (9th Cir. 2004)
Wakkary v. Holder, 558 F.3d 1049 (9th Cir. 2009)

Wang v. Ashcroft, 341 F.3d 1015 (9th Cir. 2003)
Wang v. INS, 352 F.3d 1250 (9th Cir. 2003)
Yang v. INS, 79 F.3d 932 (9th Cir. 1996)
Yazitchian v. INS, 207 F.3d 1164 (9th Cir. 2000)
Yeimane-Berhe v. Ashcroft, 393 F.3d 907 (9th Cir. 2004)
Zahedi v. INS, 222 F.3d 1157 (9th Cir. 2000)
Zehatye v. Gonzales, 453 F.3d 1182 (9th Cir. 2006)
Zetino v. Holder, _F.3d_, 2010 WL 555334 (9th Cir. 2010)
Zhang v. Ashcroft, 388 F.3d 713 (9th Cir. 2004)
Zhang v. Gonzales, 408 F.3d 1239 (9th Cir. 2005)
Zhao v. Mukasey, 540 F.3d 1027 (9th Cir. 2008)
Zheng v. Ashcroft, 332 F.3d 1186 (9th Cir. 2003)
Zheng v. Ashcroft, 397 F.3d 1139 (9th Cir. 2005)
Zhou v. Gonzales, 437 F.3d 860 (9th Cir. 2006)
Zhu v. Mukasey, 537 F.3d 1034 (9th Cir. 2008)
Zolotukhin v. Gonzales, 417 F.3d 1073 (9th Cir. 2005)

REAL ID Act of 2005 – Commentary by D. Ray Mantle

INA § 208(b)(1)(B) BURDEN OF PROOF — (Applies to all applications filed on or after May 11, 2005)

(I) IN GENERAL. — The burden of proof is on the applicant to establish that the applicant is a refugee, within the meaning of section 101(a)(42)(A).

This is the same burden that has been codified at 8 C.F.R. § 1208.13(a).

To establish that the applicant is a refugee within the meaning of such section, the applicant must establish that race, religion, nationality, membership in a particular social group, or political opinion was or will be **at least one central reason** for

Ninth Circuit precedent had held "an applicant need only produce evidence from which it is reasonable to believe that the harm was motivated, **at least in part**, by an actual or implied protected ground." *Gafoor v. INS*, 231 F.3d 645, 650–51 (9th Cir. 2000) (emphasis added,

persecuting the applicant.	internal quotation marks omitted). The standard "at least one central reason" is not as restrictive as "*the* central reason, " which had been proposed earlier. At a minimum, the amendment abrogates *Ratnam v. INS*, 154 F.3d 990, 995 (9th Cir. 1998) ("[I]f there is no evidence of a legitimate prosecutorial purpose for a government's harassment of a person ... there arises a presumption that the motive for harassment is political.") (internal quotation marks omitted) and *Navas v. INS*, 217 F.3d 646, 657 (9th Cir. 2000) ("In some cases, the factual circumstances alone may provide sufficient reason to conclude that acts of persecution were committed on account of political opinion, or one of the other protected grounds. Indeed, this court has held persecution to be on account of political opinion where there appears to be no other logical reason for the persecution at issue.") (internal citation omitted).
(ii) SUSTAINING BURDEN. —The testimony of the applicant **may** be sufficient to sustain the applicant's burden without corroboration, **but only if** the applicant satisfies the trier of fact that the applicant's testimony is credible, is persuasive, and refers to specific facts sufficient to demonstrate that the applicant is a refugee.	Critics argue that "requiring satisfaction of the 'trier of fact' threatens to eliminate review of such decisions by the BIA as well as by the courts." Annigje J. Buwalda, An Analysis of the Asylum-Related Provisions of the REAL ID Act (H.R. 418), (available for members by searching at http://www.aila.org/). It is unclear whether the Ninth Circuit will bifurcate its analysis to allow IJs to make findings regarding the sufficiency of specific facts separate and apart from a credibility determination, rather than rejecting the "sufficiency" grounds as improper speculation and conjecture. *See, e.g., Shah v. INS*, 220 F.3d 1062 (9th Cir. 2000).
In determining whether the applicant has met the applicant's burden, the trier of fact **may** weigh the credible testimony along with other evidence of record.	The Ninth Circuit is likely to continue to interpret "may" as "shall, " and find that the failure to weigh credible testimony and other evidence is an abuse of discretion. INA § 242(b)(4)(D) has been amended to include: "No court shall reverse a determination made by a trier of fact with respect to the availability of corroborating evidence, as described in section 208(b)(1)(B), 240(c)(4)(B), or 241(b)(3)(c), unless

	the court finds, pursuant to section 242(b)(4)(B), that a reasonable trier of fact is compelled to conclude that such corroborating evidence is unavailable."
Where the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence.	Cases such as *Sidhu v. INS*, 220 F.3d 1085, 1091–92 (9th Cir. 2000), *Kaur v. Ashcroft*, 379 F.3d 876, 890 (9th Cir. 2004), and others appear to compel reasonable triers of fact to conclude that "corroborating affidavits from relatives or acquaintances living outside the United States . . . is almost never easily available." The difference between "not easily available" evidence and "unavailable" evidence is yet to be decided.
(iii) CREDIBILITY DETERMINATION. — Considering the totality of the circumstances, and all relevant factors, a trier of fact may base a credibility determination on the demeanor, candor, or responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements (whenever made and whether or not under oath, and considering the circumstances under which the statements were made), the internal consistency of each such statement, the consistency of such statements with other evidence of record (including the reports of the Department of State on country conditions), and any inaccuracies or falsehoods in such statements, without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor.	Although the amendment provides that credibility determinations may be made "without regard to whether an inconsistency, inaccuracy, or falsehood goes to the heart of the applicant's claim, or any other relevant factor, " nevertheless, the IJ still must "consider[ ] the totality of the circumstances, and all relevant factors." Inconsistencies, inaccuracies, and falsehoods which do not go to the heart of the claim must still be weighed against consistent statements at the heart of the claim.
There is no presumption of credibility, however, if no adverse credibility determination is explicitly made, the applicant or witness shall have a rebuttable presumption of credibility on appeal.	Unless the Ninth Circuit interprets this provision to mean "no *valid* adverse credibility determination, " panels which reverse an adverse credibility determination should remand without making their own finding of credibility. Absent a presumption of credibility, however, it is still possible for the court to address whether substantial evidence compels

the conclusion that the applicant has sustained the burden of proof.

INA § 241(b)(3)(c) Sustaining Burden of Proof; Credibility Determinations.—(Applies to all applications filed on or after May 11, 2005)

In determining whether an alien has demonstrated that the alien's life or freedom would be threatened for a reason described in subparagraph (A), the trier of fact shall determine whether the alien has sustained the alien's burden of proof, and shall make credibility determinations, in the manner described in clauses (ii) and (iii) of section 208(b)(1)(B).

Again, the burden of proof and credibility determinations are distinguished in the statute.

INA § 208(b)(2) Exceptions to Eligibility for Asylum.—(Applies to all applications filed on or after May 11, 2005)

(A) In general—Paragraph (1) shall not apply to an alien if the Attorney General determines that—

...

(v) the alien is described in subclause (I), (II), (III), (IV), or (V) of section 212(a)(3)(B)(I) or section 237(a)(4)(B) (relating to terrorist activity), unless, in the case only of an alien described in subclause (IV) of section 212(a)(3)(B)(I), the Attorney General determines, in the Attorney General's discretion, that there are not reasonable grounds for regarding the alien as a danger to the security of the United States; ...

An alien need only be "described" in the relevant provisions and need not be actually charged as inadmissible or removable under the listed provisions. While the amendment to section 208(b)(2) applies only to applications filed on or after May 11, 2005, the changes to the terrorist-related inadmissibility and removal grounds at section 212(a)(3)(B) and 237(a)(4)(B), including what constitutes terrorist-related activity, apply to "removal proceedings instituted before, on, or after [May 11, 2005, and to] acts and conditions constituting a ground for inadmissibility, excludability, deportation, or removal occurring or existing before, on, or after [May 11, 2005]." REAL ID Act § 104(d).

It is unclear as to why the terrorist inadmissibility grounds are limited to subclauses (I)–(V) of INA § 212(a)(3)(B)(I), when INA § 237(a)(4)(B) includes *all* of the subclauses as

grounds for removal, and therefore, bars to asylum.

Afghanistan

Nehad v. Mukasey, 535 F.3d 962 (9th Cir. 2008)
Afridi v. Gonzales, 442 F.3d 1212 (9th Cir. 2006)
Abassi v. INS, 305 F.3d 1028 (9th Cir. 2002)
Mosa v. Rogers, 89 F.3d 601 (9th Cir. 1996)
Nasseri v. Moschorak, 34 F.3d 723 (9th Cir. 1994)

> ***Nehad v. Mukasey*, 535 F.3d 962 (9th Cir. 2008)** (A55-398-900); reversing and remanding a denial of a motion to reopen. Respondent asserted ineffective assistance from his lawyer in that he was confronted by him with the choice of either taking voluntary departure or having him withdraw as counsel. Counsel had opined that because of changes in Afghanistan, any asylum claim would be "weak." The court found ineffective assistance and emphasized that Respondent had meritorious grounds to either pursue a claim for asylum and/or contest removability. POLLAK.

Well-Founded Fear/ Objectively Reasonable, Found. Notwithstanding Respondent's fear being based on the activities of the Taliban and their long since having been removed from power, the court held that there was ample evidence to make a successful claim from "fear of persecution by persons the Afghan government is unable or unwilling to control." (at *8)

Conviction/ Vacated. Respondent's conviction, which served as the basis for removability, had been vacated. The basis of the court's action was not set out. The government argued that the vacation was for "rehabilitative or immigration reasons, not for any substantive or procedural defect in the conviction itself." (at *9). Respondent's "moving papers focused on the immigration consequences of the conviction." *Id.* "We have required the government to prove by clear and convincing evidence that the court's *only* reasons for vacating the conviction were unrelated to any substantive or procedural defect. *Nath v. Gonzales*, 467 F.3d 1185, 1188-89 (9th Cir. 2006) (emphasis in original)." *Id.*

***Afridi v. Gonzales*, 442 F.3d 1212 (9th Cir. 2006) (A27-338-200)**; the panel's finding that the respondent had been convicted of the aggravated felony of sexual abuse of a minor from his conviction for statutory rape was reversed by a unanimous en banc decision in *Estrada-Espinoza v. Mukasey*, 546 F.3d 1147 (9th Cir. 2008). The Court based its reversal on finding that the "conduct . . . is categorically broader than the generic definition of 'sexual abuse of a minor.'"

Bars to Asylum/ Particularly Serious Crime, Factors to Consider. The panel found that the factors set forth in *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982) had not been properly applied. The panel found: "The BIA considered two of the Frentescu factors, the nature of the conviction, and the sentence imposed" as opposed to the "circumstances and underlying facts." In particular the panel found it significant that there was no discussion as to "whether force was used." The panel further emphasized that with regard to aggravated felonies where a sentence of less than five years of confinement was imposed, there can be no "per se" finding that such would be a particularly serious crime and that the *Frentescu*analysis must be followed.
CAT. The panel found that CAT relief had been properly denied in that it found that there were no "particular factors...to conclude that it is more likely than not that he would be tortured by the Afghan government or that it would acquiesce to his torture if he returns to his country."

***Abassi v. INS*, 305 F.3d 1028 (9th Cir. 2002)(A71-578-156)**; remanding for BIA to consider motion to reopen under CAT in light of the most recent country profile; W. FLETCHER.

Country Reports/ Involving Pro Se Applicant. Regulation at 8 C.F.R. § 208.16(c)(2), which places the burden of proof on the applicant, does not require an alien to attach a government report that is easily available. "We do not suggest that the BIA must take administrative notice of a country profile when it is not mentioned in the motion, or that the BIA must track down other documents." (at 1031). But when a *pro se* applicant mentions "recent Country Reports, " the Board must "consider the most recent relevant profile at the time it makes its decision." (at 1032).

***Mosa v. Rogers*, 89 F.3d 601 (9th Cir. 1996)**; remanding for IJ to consider asylum claim without reliance on the adverse credibility finding. BEEZER; superseded by statute, *Hose v. INS*, 180 F.3d 992 (9th Cir. 1999).

Credibility/ Corroboration Provided. Alien's testimony regarding the spies at his school and his impressment into Afghan military service was found incredible simply because the IJ and BIA did not wish to believe him; there was no support for disbelieving that, as a suspected mujahidin sympathizer, Alien was given only one week of training before being made to parachute into mujahidin territory. Alien's contention was supported by statements in the Country Report.

***Nasseri v. Moschorak*, 34 F.3d 723 (9th Cir. 1994)**; remanding for AG to exercise [favorable] discretion; D.W. NELSON; *overruled on other grounds by Fisher v. INS*, 79 F.3d 955 (9th Cir. 1996).

Protected Grounds/ Imputed Political Opinion, Found. Kidnappers questions regarding which group alien belonged to, how large the group was, and what their objective was, may have betrayed their ignorance of the details of her participation in the National Islamic Front for Afghanistan (NIFA), but also indicated that alien's attackers believed she was a political enemy and that they were seeking to discover information about her political activities. Alien worked as a teacher, was an active member of the NIFA (a political group opposed to the government), and distributed leaflets.

Albania

Belishta v. Ashcroft, 378 F.3d 1078 (9th Cir. 2004)

***Belishta v. Ashcroft*, 378 F.3d 1078 (9th Cir. 2004)**; staying mandate to allow BIA to reopen for consideration of atrocious past persecution. Alien sought relief under 8 C.F.R. § 1208.13(b)(1)(ii)(B) (effective January 5, 2001), providing relief for those who face "serious harm upon removal, even after conditions in the petitioner's country have improved." (at 679). The IJ found past persecution "but for the fact that the threats and attacks were not motivated by political opinion or any other protected ground, " but the Appeals Court did not rule on this finding. REAVLEY, W. FLETCHER, and TALLMAN.

Past Persecution/ Humanitarian Asylum, Standard. "We emphasize that in order to be eligible for asylum under [8 C.F.R. § 1208.13 (b)(1)(iii)(B)], an applicant must still establish past persecution on account of a protected ground .... The applicant must also establish a reasonable possibility of fear of future 'serious harm, ' although this threat need not result from any particular animus." (at 1080; citing *Krastev v. INS*, 292 F.3d 1268, 1271 (10th Cir. 2002)).

Algeria

Bellout v. Ashcroft, 363 F.3d 975 (9th Cir. 2004)

***Bellout v. Ashcroft*, 363 F.3d 975 (9th Cir. 2004)**; affirming IJ denials of relief; SILVERMAN.

Bars to Asylum/ Terrorist Bar. Alien who testified he was a member of the Armed Islamic Group (GIA), which is designated as a terrorist organization by the Department of State, and lived in their camps for three years, was therefore ineligible for asylum, statutory withholding and CAT withholding. Alien testified to one incident of abuse in 1994 at the hands of the government—a minimal showing of past persecution. *Cheema v. INS*, 350 F.3d 1035 (9th Cir. 2003), is distinguished because it was premised on the pre-IIRIRA statute's two-pronged test.

Alien failed to present evidence that members of militant groups who leave Algeria will be persecuted or tortured upon return and, therefore, did not qualify for CAT deferral. Compare *Cheema v. Ashcroft*, 383 F.3d 848 (9th Cir. 2004) (raising money that reached Sikh resistance organizations and having phone conversations with terrorists constitutes terrorist activities).

Argentina

Lanza v. Ashcroft, 389 F.3d 917 (9th Cir. 2004)

***Lanza v. Ashcroft*, 389 F.3d 917 (9th Cir. 2004)**; BIA's denial of withholding and CAT relief affirmed, but case remanded to determine if denial of asylum was based on timeliness issue or the merits. Applicant's testimony of persecution that occurred 10 years ago on account of UCR involvement was not credible, due to her deliberate flight through Mexico to the U.S. and waiting to file for asylum until she was placed in removal proceedings. Being blacklisted and on one occasion being pushed and threatened does not constitute persecution. Country Reports refuted her claim of a fear of torture. SILVER; (PAEZ,

dissent: Asylum and withholding claims are factually interrelated and should both be remanded to avoid piecemeal resolution of claims.); *distinguished by Kasnecovic v. Gonzales*, 400 F.3d 812 (9th Cir. 2005).

Credibility/ Implausibility. Although petitioner claimed she fled Argentina because of an attack in her home, the facts she (1) had applied for a passport a few weeks before the alleged attack, (2) carried a smuggler's contact information with her to Mexico, (3) left Mexico for the United States after only one week, and (4) didn't apply for asylum until she was placed in removal proceedings almost ten years later, supported IJ's determination the home invasion story was a post hoc justification. (at 934).

Persecution/ Not Rising to Level Of . Although being blacklisted by the Menem government, and on one occasion being pushed, punched, called names, and threatened with her life if she continued her political activities, are reprehensible actions, "they are not so overwhelming so as to necessarily constitute persecution ... on account of political opinion." (at 934).

Well-Founded Fear/ Continued Family Presence. Continued presence of similarly-situated family members in the country of origin without incident mitigates a well-founded fear. Even greater emphasis may be placed on the Country Report's lack of any mention of persecution of political party members or other political groups. (at 935).

Armenia

Baghdasaryan v. Holder, 592 F.3d 1018 (9th Cir. 2010)
Karapetyan v. Mukasey, 543 F.3d 1118 (9th Cir. 2008)
Grigoryan v. Mukasey, 515 F.3d 999 (9th Cir. 2008), *withdrawn*, 527 F.3d 791 (9th Cir. 2008)
Vatyan v. Mukasey, 508 F.3d 1179 (9th Cir. 2007)
Muradin v. Gonzales, 494 F.3d 1208 (9th Cir. 2007)
Movsisian v. Ashcroft, 395 F.3d 1095 (9th Cir. 2005)
Mamouzian v. Ashcroft, 390 F.3d 1129 (9th Cir. 2004)
Abovian v. INS, 219 F.3d 972 (9th Cir. 2000)
Avetova-Elisseva v. INS, 213 F.3d 1192 (9th Cir. 2000)
Rostomian v. INS, 210 F.3d 1088 (9th Cir. 2000)
Yazitchian v. INS, 207 F.3d 1164 (9th Cir. 2000)
Mgoian v. INS, 184 F.3d 1029 (9th Cir. 1999)
Andriasian v. INS, 180 F.3d 1033 (9th Cir. 1999)

***Rostomian v. INS*, 210 F.3d 1088 (9th Cir. 2000)**; upholding denial of asylum and withholding; *distinguished by* *Ndom v. Ashcroft*, 384 F.3d 743 (9th Cir. 2004).

Persecution / Generalized Violence; Civil Strife/ Claims Arising in Context Of. Petitioner failed to establish that an attack in which he sustained knife wounds was anything more than an act of random violence during a period of significant strife. An assertion that "old animosities between Azeris and Armenians still exist" is insufficient to establish a well-founded fear of persecution. (at 1089).

***Baghdasaryan v. Holder*, 592 F.3d 1018 (9th Cir. 2010)(A77-993-598);** reversing a denial of relief to a "whistleblower" who asserted a claim based on threats and physical violence with regard to his protesting illegal demands for money by family members "on behalf" of a powerful local political figure. Respondent was found to be credible. PREGERSON.

Protected Grounds/ Imputed Political Opinion, Found. The circuit noted that "the BIA found 'very little indication' that the Armenian government was imputing any political opinion to respondent and that he was merely the victim of criminal misconduct." The circuit rejected this conclusion, holding that "opposition to government corruption is an expression of political opinion, " citing *Fedunyak v. Gonzales*, 477 F.3d 1126, 1129 (9th Cir. 2007). The circuit also rejected the Board's finding that there was "no evidence of any basis for his mistreatment, other than his failure to pay the money requested, " citing *Zhu v. Mukasey*, 537 F.3d 1034, 1045 (9th Cir. 2008) ("a Chinese factory worker wrote a letter to the town government after her supervisor, who was also a government official, raped her"); *Hasan v. Ashcroft*, 380 F.3d 1114, 1120 (9th Cir. 2004) ("finding political opinion where a journalist wrote a newspaper article criticizing a corrupt government official"). The circuit recognized that some of the "harm" respondent experienced was "motivated by personal greed" and that there was no showing of "systematic corruption, " but did not find that such changed the outcome.

Nexus/ Pre REAL ID. The circuit notes that because the application was filed before the effective date of the REAL-ID Act, nexus is evaluated according to the 'on account of' standard, rather than the 'central reason' standard.

***Karapetyan v. Mukasey*,** 543 F.3d 1118 (9th Cir. 2008) **(A 95 179 012)**; reversing and remanding a denial based on failure to corroborate a claim, inadequate demonstration of

past persecution, and lack of compliance as to submission of fingerprints for security checks. Respondent was found to have testified credibly as to being detained, having received ethnic slurs, and physical mistreatment. The basis of the claim was ethnicity and political opinion. PREGERSON.

Credibility/ Corroboration Not Required. "When an applicant has been found to testify credibly . . . no further corroboration is required."
Persecution/ Physical Harm Not Necessary. Past persecution has not been found "because Karapetyan did not seek medical attention." The court cited to *Surita v. INS*, 95 F.3d 814 (9th Cir. 1996): "threats and attacks constitute past persecution even where an applicant has not been beaten or physically harmed. The court also cited *Lopez v. Ashcroft*, 366 F.3d 799 (9th Cir. 2004).
Persecution/ Cumulative Effect. Such may be established "because of the cumulative impact of several incidents even where no single incident would constitute persecution on its own." The court cited *Guo v. Ashcroft*, 361 F.3d 1194, 1203 (9th Cir. 2004).

Fingerprints/ Failure to submit. It is error where respondent was not given additional time to submit his fingerprints for the required security checks as he had been directed. The court cited with approval what it termed the "similar" case of *Cui v. Mukasey*, 538 F.3d 1289 (9th Cir. 2008) where the personal circumstances of the applicant were found to have justified the same and "he did not receive adequate notice of the fingerprint requirement.

***Grigoryan v. Mukasey*, 515 F.3d 999 (9th Cir. 2008), *withdrawn*, 527 F.3d 791 (9th Cir. 2008)**.

***Vatyan v. Mukasey*, 508 F.3d 1179 (9th Cir. 2007) (A75-725-875)**; reversing and remanding a denial of asylum on the basis of the non-consideration of the purported documents from the government of Armenia, which had not been certified under 8 C.F.R. §287.6(c). The IJ denied the claim on credibility grounds. The IJ also read *Khan v. INS*, 237 F.3d 1143 (9th Cir. 2000), to require documents offered from a foreign government to be authenticated in some way other than by self-serving statements from the alien himself. FISHER. There was a dissent by CLIFTON, who notes: "The message to IJs from this decision is to admit all proffered evidence..." (at 1188).

Evidence/ Authentication, Weight. The court cited a number of decisions which excuse aliens from complying with this requirement. *Ding v. Ashcroft*, 387 F.3d 1131, 1135 (9th Cir. 2004); *Liu v. Ashcroft*, 372 F.3d 529 (3rd Cir. (2004); *Yan v. Gonzales*, 438 F.3d 1249 (10th Cir. 2006); *Lin v. Dept. of Justice*, 428 F.3d 391 (2nd Cir. 2005); *Shtaro v. Gonzales*, 435 F.3d 711 (7th Cir. 2006). In other words, the documents must have been considered and if found not to be authentic, it would go to the weight that may have been assigned to them.

***Muradin v. Gonzales*, 494 F.3d 1208 (9th Cir. 2007) (A78-754-318)**; reversing and remanding denials of CAT and asylum. The respondent had been a soldier in the Armenian army. He testified that he had been badly beaten, detained, and forced to work for the private benefit of any officer while in the army. An IJ denied asylum but granted protection under CAT. Both sides appealed. The Board upheld the asylum denial but reversed the grant under CAT. The court accepted the denial of asylum on the imputed political opinion theory, but remanded to consider respondent's claim of being a member of a particular social group. The court also reversed the denial of CAT protection. BRIGHT (sitting by designation from the Eighth Circuit).

Administrative Proceedings/ IJ Failure to Address a Claim. The IJ's failure to address a portion of the respondent's claim compelled a remand. (at 1210) (citing *Singh v. Gonzales*, 416 F.3d 1006, 1015 (9th Cir. 2005); *Sagaydak v. Gonzales*, 405 F.3d 1035, 1040-41 (9th Cir. 2005); *Navas v. INS*, 217 F.3d 646, 658 n.16 (9th Cir. 2000)). The proposed social group was "former soldiers."

CAT/ Torture, Found; More Likely Than Not, Found; Country Reports/ To Support Claim, Sufficient. The Board's finding that the respondent had not been tortured was reversed outright. So was the assessment by the Board that he had not shown that he "would likely be tortured upon return." In making that assessment, the court relied on Department of State information from the period 1998 to 2001. "The report indicated that the number of conscript deaths from physical abuse decreased 18% between 1999 and 2001, the report also stated that there are between sixteen to twenty non-combat deaths per month." (at 1211).

***Movsisian v. Ashcroft*, 395 F.3d 1095 (9th Cir. 2005) (A70-966-525)**; remanding for the BIA to state the grounds on which it was denying the motion to reopen; but affirming a finding that the alien had not established a well-founded fear of persecution on religious grounds; TASHIMA; (GOODWIN, concurring in part and dissenting in part on procedural grounds).

Protected Grounds/ Religion. Pentecostal Christian testified as to acts of harassment against his mother for her practicing of her religion and offered expert opinion testimony on problems of the free practice of the Pentecostal religion, expressing a fear that he "would be punished for his refusal to obey any orders that conflicted with his religious beliefs, " but presented no evidence that Armenian government would target him for conscription or punishment on account of his religion.

Persecution/ Forced Conscription. "[F]orced conscription or punishment for evasion of military duty generally does not constitute persecution on account of a protected ground. *See* *Castillo v. INS*, 951 F.2d 1117, 1122 (9th Cir. 1991) ('The fact that a nation forces a citizen to serve in the armed forces along with the rest of the country's population does not amount to persecution.')" *Id.* at 1097. *See also Abedini v. INS*, 971 F.2d 188, 191 (9th Cir. 1992) (noting the "long-standing rule that it is not persecution for a country to ... require military service of its citizens").

Nexus/ Motive Not Found. "[Alien] presented no evidence that the Armenian government would target him for conscription or punishment on account of his religion or other protected ground. *See* *Canas-Segovia v. INS*, 970 F.2d 599, 601 (9th Cir. 1992) (holding that religious conscientious objectors did not establish religious persecution because they did not show that the government intended to persecute them for their beliefs)." (at 1097).

***Mamouzian v. Ashcroft*, 390 F.3d 1129 (9th Cir. 2004)**; affirming IJ denial of withholding and CAT, but remanding upon finding petitioner statutorily eligible for asylum; REINHARDT.

Persecution/ Physical Harm, Detention, Threats Alone. Three instances of beating and kicking by government officials, one of which caused petitioner to lose consciousness, two instances of incarceration for political expression, and threats to her life by government officials constitutes persecution, contrary to the IJ's finding the abuse was too gentle to rise to the level of persecution. Death threats alone in conjunction with detention, attacks, "or even close confrontations, " justify a finding of past persecution. (at 1130–34).

Nexus/ Motive, Evidence Standard. "An applicant need only produce evidence from which it is reasonable to believe that the harm was motivated, at least in part, by an actual or implied protected ground. *Borja v. INS*, 175 F.3d 732, 736 (9th Cir. 1999) (en banc); *see also* *Agbuya v. INS*, 241 F.3d 1224, 1228 (9th Cir. 2001)." (at 1134).

Protected Grounds/ Political Opinion, Found. Arrests and beatings for expressing opposition to the economic policies of the ruling HeHeShe party, as implemented in a state-run factory, qualifies as persecution on account of political opinion and was not merely opposition to corrupt individuals. (at 1134).

Nexus/ Retribution, On Account of Protected Ground. Retaliation against an individual who opposes government corruption —corruption which is "inextricably intertwined with governmental operation, " as opposed to "individuals whose corruption was aberrational"— can constitute persecution on account of political opinion. (at 1134–35 (citing *Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000); *Hasan v. Ashcroft*, 380 F.3d 1114, 1120–21 (9th Cir. 2004); *Njuguna v. Ashcroft*, 374 F.3d 765, 770–71 (9th Cir. 2004)).

Well-Founded Fear/ Objectively Reasonable, Found; Objective Evidence, Cultural Milieu ; Ten Percent Rule. Successful evasion of government authorities and flight from the country does not make a fear of future persecution any less objectively reasonable. (at 1137). "'The reasonableness of the fear must be determined in the political, social and cultural milieu of the place where the petitioner lived[,] and even a ten percent chance of persecution may establish a well-founded fear.' *Khup* [*v. Ashcroft*, 376 F.3d 898, 904 (9th Cir. 2004)] (alteration in original) (internal citations and quotation marks omitted); *see also* *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431, 440, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987); *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001)." (at 1135–36).

***Abovian v. INS*, 219 F.3d 972 (9th Cir. 2000);** remanding to allow petitioner reasonable opportunity to explain perceived deficiencies; includes a broad discussion on how adverse credibility findings must be crafted to show specific and cogent inconsistencies that go to the heart of the claim; PREGERSON; (WALLACE, order amending dissent at 234 F.3d 492 (9th Cir. 2001): Majority decided a constitutional issue not briefed by the parties; decision should be upheld simply because petitioner failed to present sufficient evidence.); ***reh'g en banc denied*, 257 F.3d 971 (9th Cir. 2001)**. (KOZINSKI, SCANNLAIN, TROTT, T.G.

NELSON, KLEINFELD, GRABER, TALLMAN and RAWLINSON, dissent: The majority effectively inverts the standard by saddling the BIA with the burden of proving that petitioner is *not* entitled to relief.)

Administrative Proceedings/ Judicial Review. "While today's opinion is particularly egregious, this case is hardly atypical of our circuit's immigration law jurisprudence. Rather, it is one more example of the nitpicking we engage in as part of a systematic effort to dismantle the reasons immigration judges give for their decisions. *See, e.g.*, *Martirosyan v. INS*, 229 F.3d 903 (9th Cir. 2000), *vacated and reh'g en banc granted*, 242 F.3d 905 (9th Cir. 2001) (the IJ could not dismiss as 'speculative' a draft dodger's claim that had he remained in Armenia he would have been forced to commit war crimes, despite the complete absence of evidence that *any* Armenian soldier had *ever* been compelled to commit such acts; *Shoafera v. INS*, 228 F.3d 1070 (9th Cir. 2000) (petitioner established her eligibility for asylum where she first testified to being raped for a nondiscriminatory reason and only after coaching by her counsel said that she was also raped because of her ethnicity); *Bandari v. INS*, 227 F.3d 1160 (9th Cir. 2000) (the IJ may not doubt petitioner's credibility after he made numerous inconsistent statements between his application and his testimony about how and when he was beaten by the police); *Avetova-Elisseva v. INS*, 213 F.3d 1192 (9th Cir. 2000) (despite the admission of petitioner's expert, the BIA lacked substantial evidence to conclude that Armenians in Russia were not subject to a pattern or practice of persecution). None of this has anything to do with administrative law, as that concept is known anywhere outside the Ninth Circuit. Nor has it anything to do with the laws Congress has passed and the Supreme Court has interpreted. I emphatically dissent." (Dissent to order denying reh'g en banc, 257 F.3d at 980–81).

***Avetova-Elisseva v. INS*, 213 F.3d 1192 (9th Cir. 2000).** *See* **Russia** (ethnic Armenian who was citizen of both Azerbaijan and Russia).

***Yazitchian v. INS*, 207 F.3d 1164 (9th Cir. 2000);** granting withholding; THOMAS; *distinguished by* *Shoafera v. INS*, 228 F.3d 1070 (9th Cir. 2000).

Protected Grounds/ Political Opinion, Found; Persecution/ Extortion. "Extortion demanded or extracted by the government, in part because of the petitioner's political opinion, can constitute persecution on the basis of a statutorily protected ground. *See* *Desir v. Ilcherto*, 840 F.2d 723, 727 (9th Cir. 1988)." (at 1168).

Nexus/ Motive, Evidence Standard. *INS v. Elias-Zacarias*, 502 U.S. 478, 483 (1992), "did not preclude claims where persecution took the form of extortion based on imputed political opinion: it merely required 'direct or circumstantial' evidence of a motive founded on one of the statutorily protected grounds." (at 1168).

***Mgoian v. INS*, 184 F.3d 1029 (9th Cir. 1999);** granting withholding and remanded for an exercise of discretion to grant asylum; applicant received threats and other family members experienced physical violence; BRIGHT; (RYNER, dissent: persecution was not based on a statutorily protected ground.

Well-Founded Fear/ Pattern or Practice. "[A] pattern of persecution targeting a given family that plays a prominent role in a minority group that is the object of widespread hostile treatment supports a well-founded fear of persecution by its surviving members." (at 1036).
Protected Grounds/ Family. While the death of one family member does not automatically entitle the entire family to asylum, when all of petitioner's principal family members are subjected to forms of violence, persecution and harassment as members of the Kurdish-Moslem intelligentsia, it is reasonable to infer that the family has become a specific target of those with a generalized hatred of Kurdish-Moslems in Armenia. (at 1036).
Nexus/ Motive Found. "There can be no basis for finding a well-founded fear of persecution unless the group (whatever it is) has been persecuted by the government or by forces beyond its control on account of a trait such as ethnicity, religion, or political beliefs that are common to the entire group." (dissent at 1038).

***Andriasian v. INS*, 180 F.3d 1033 (9th Cir. 1999).** *See* **Azerbaijan** (ethnic Armenian who fled Azerbaijan).

Azerbaijan

Avetova-Elisseva v. INS, 213 F.3d 1192 (9th Cir. 2000)
Rostomian v. INS, 210 F.3d 1088 (9th Cir. 2000)
Andriasian v. INS, 180 F.3d 1033 (9th Cir. 1999)

***Rostomian v. INS*, 210 F.3d 1088 (9th Cir. 2000)**; *See* **Armenia** (violence on the Azeri-Armenian border).

***Avetova-Elisseva v. INS*, 213 F.3d 1192 (9th Cir. 2000)**; *See* **Russia** (ethnic Armenian who was citizen of both Azerbaijan and Russia).

***Andriasian v. INS*, 180 F.3d 1033 (9th Cir. 1999) (A73-909-884)**; remanding to grant asylum; REINHARDT.

Bars to Asylum/ Firm Resettlement, Not Found. Ethnic Armenian family fled ethnic cleansing in Azerbaijan and clearly established past persecution based on physical attacks and threats, only to face discrimination and persecution in Armenia based on their religion and accent. The family's nomadic stay in Armenia was not "undisturbed, " and therefore did not qualify as firm resettlement. A discretionary denial of asylum based on firm resettlement is permitted only if the alien would not face harm *or* persecution in the third country; an alien need not demonstrate the likelihood of persecution—a lesser form of threatened injury is enough. The burden is on the government to demonstrate the alien *would not* be subject to harm in the third country. (at 1045). See 8 C.F.R. § 208.13(d). "Together, the mandatory and discretionary regulations set forth the minimum conditions under which a petitioner may be denied asylum because he has an opportunity to reside permanently in a third country. Under the regulations, the circumstances must show that he has established, or will be able to establish, residence in another nation, and that he will have a reasonable assurance that he will not suffer further harm or persecution there." (at 1046).

Country of Removal/ Designation. Last-minute designation of Armenia as the country for removal violated due process by not allowing alien to present evidence of persecution in Armenia. (at 1041).

Persecution/ Threats Alone. "[T]he warning that the [petitioners] would be killed if they did not leave Azerbaijan immediately—which was made all the more credible by the fact that the Azeri thugs who issued the threat had just murdered [their] neighbor in cold blood—would by itself be sufficient to establish past persecution." (at 1042).

Unable or Unwilling to Control/ Nationwide Basis. Widespread nature of persecution of ethnic Armenians, combined with police officer's discriminatory refusal to assist, clearly establishes the government of Azerbaijan either could not or would not control Azeris who sought to threaten and harm ethnic Armenians. (at 1042–43).

Bangladesh

Ahmed v. Keisler, 504 F.3d 1183 (9th Cir. 2007)
Gomes v. Gonzales, 429 F.3d 1264 (9th Cir. 2005)
Hasan v. Ashcroft, 380 F.3d 1114 (9th Cir. 2004)
Hoque v. Ashcroft, 367 F.3d 1190 (9th Cir. 2004)
Khan v. INS, 237 F.3d 1143 (9th Cir. 2001)

***Gomes v. Gonzales*, 429 F.3d 1264 (9th Cir. 2005) (A70-64- 041, 042, and 043);** upholding a denial of relief on the basis of a failure to demonstrate the objective component of the claim. The court relied on Department of State reports to support that assessment. The petitioners were a Catholic family who expressed the fear that they would be persecuted by "Muslim extremists" on account of their religion. The lead petitioner's brother "who engaged in religious activism" had been killed by a "Muslim extremist." The police had responded to "the extent it was able" but ineffectively. The court found that instances of "harassment" on the way to the church" would not constitute persecution. CALLAHAN.

Past Persecution/ Internal Relocation Possible. Respondents had lived in the capital city "without incident." Other remaining family in Bangladesh had also moved to the capital city and "only experienced harassment...the respondents can safely relocate."

***Ahmed v. Keisler*, 504 F.3d 1183 (9th Cir. 2007) (A75-516-529)**; reversing and remanding a denial of relief. The respondent is an ethnic Bihari- a minority group within Bangladesh. He participated in political demonstrations protesting on behalf of rights for his ethnic group and had been "beaten." His brother who had also been an activist "disappeared" at the hands of political opponents. The respondent and his family were found to be members of a "disfavored group." Credibility was not at issue. PREGERSON. There was a dissent by RAWLINSON.

Well-Founded Fear/ Ten Percent Rule. The court repeated its long held position that: "Even a ten percent chance that the applicant will be persecuted in the future is enough to establish a well-founded fear." *Sael v. Ashcroft*, 386 F.3d 922, 925 (9th Cir. 2004) (quoting *Knezevic v. Ashcroft* 367 F.3d 1206, 1212). In making that determination, "[t]he key question is whether looking at the cumulative effect of all the incidents a petitioner has suffered, the treatment [he or] she received rises to the level of persecution." *Korablina v. INS*, 158 F.3d 1038, 1044 (9th Cir. 1998). Violence directed at a family member "provides additional support for a claim of persecution." *Baballah v. Ashcroft*, 367 F.3d 1067, 1074-75 (9th Cir. 2004)

Protected Grounds/ Political Opinion, Found; Disfavored Group. Although respondent claimed no "political opinion" by virtue of his activities on behalf of members of his ethnic group, he was found to have a successful claim.

Unable or Unwilling to Control/ Private Agent. The fact that a family member was kidnapped by the opposing political party did not preclude the claim from being granted. Relying on *Korablina* , 158 F.3d 1038 at 1044, the court found that, "acts of harassment or violence perpetrated by an entity that the government fails to control can constitute evidence of persecution." (at 1196).

CAT/ Torture, Not Found. The denial of CAT relief was upheld. With support from *Hasan v. Ashcroft*, 380 F.3d 1114, 1120-23 (9th Cir. 2004), the court concluded that "[t]he evidence in the record compels a finding that it is more likely than not that Ahmed will be persecuted if returned to Bangladesh...it is not clear that these actions [beatings, threats, and the disappearance of a relative] would rise to the level of torture." (at 1201).

> ***Hasan v. Ashcroft*, 380 F.3d 1114 (9th Cir. 2004)**; remanding to determine whether presumption of future persecution has been rebutted; denial of CAT relief sustained; D.W. NELSON. (Whistleblower case.)

Protected Grounds/ Political Opinion, Found. Female newspaper reporter's articles criticizing the corruption of an important government leader in the region and describing "an institutionalized level of corruption that goes far beyond an individual, anomalous case, " lead to attacks on her husband and parents and a warrant poster calling for punishment for her journalism and anti-Islamic activities, which qualifies as persecution on account of political opinion. (at 1120)."When a powerful political leader uses his political office as a means to siphon public money for personal use, and uses political connections throughout a wide swath of government agencies, both to facilitate and to protect his illicit operations, exposure of his corruption is inherently political." (at 1121).

CAT/ Internal Relocation. The IJ's finding that internal relocation was available was not accepted under *Melkonian v. Ashcroft*, 320 F.3d 1061, 1070 (9th Cir. 2003). The burden of proving the reasonableness of internal relocation in the asylum context is on the government. However, "In the CAT context, unlike asylum, the petitioners have the burden of presenting evidence to show that internal relocation is not a possibility." (at 1123).

***Hoque v. Ashcroft*, 367 F.3d 1190 (9th Cir. 2004) (A74-814-465)**; reversing adverse credibility determination and remanding to allow the government to attempt to rebut the presumption of future persecution, as past persecution was found; BEEZER.

Persecution/ Physical Harm, Kidnaping, Threats, Prosecution. Member of the Bangladesh Nationalist Party (BNP) who took an active part in encouraging voting in the face of the opposition party's boycott was kidnaped, beaten, and threatened. Alien was accused of inciting violence when demonstrations by rival parties on the same day turned violent, and entered into hiding. His fear of prosecution based on the false charge is a fear of persecution based on his political opinion, as supported by the Country Report's statement that "the Awami League Government used the [Special Powers Act] primarily as a tool to harass and intimidate political opponents." (at 1197).
Nexus/ Motive Found. Denial of relief based upon finding that alien's fear was based on potential prosecution for criminal acts was not upheld because the court found that such would be politically motivated and thus constitute persecution. "Testimony that [alien] was popular and adept at recruiting members to the BNP, engendering the personal jealousy of Awami League members, does not detract from evidence that their motivation for harming him was political." (at 1198).
Credibility/ Inconsistencies, Minor; Omission; Corroboration Not Required; Discrepancy, Dates. Inconsistencies between certain documents, dates, and failure to bring up certain events during testimony, as well as the failure to produce additional corroborative evidence, were found not to justify an adverse credibility finding.

***Khan v. INS*, 237 F.3d 1143 (9th Cir. 2001) (A70-088-748)**; remanding to allow alien to introduce excluded evidence; BROWNING, PREGERSON, and BEEZER.

Petitioner claimed past persecution on account of his own political activities in a Dhaka University student group, which included four arrests, seven-month confinement, and severe beatings. The IJ rejected his corroborating evidence for failure to authenticate it under 8 C.F.R. § 287.6(b).
Evidence/ Authentication, Procedure. Documents may be authenticated through any recognized procedure under the regulations or the Federal Rules of Civil Procedure. Requiring foreign official records to be certified by a foreign service officer stationed in the country of origin, under 8 C.F.R. § 287.6(b), is not the exclusive method of authentication.

Bosnia-Herzegovina

Knezevic v. Ashcroft, 367 F.3d 1206 (9th Cir. 2004)
Vukmirovic v. Ashcroft, 362 F.3d 1247 (9th Cir. 2004)

> ***Knezevic v. Ashcroft*, 367 F.3d 1206 (9th Cir. 2004)**; remanding to determine the reasonableness of internal relocation and to reconsider asylum and withholding of removal. Aliens fled from a general attack by Croat forces against the Serb residents in their area and were found to have established past persecution and a well-founded fear of future persecution. Croat forces who bombed and invaded a Serbian area were motivated by ethnic hatred. Petitioners fled when they realized the threat of harm was imminent. Bombings destroyed their restaurant and home, and Croats stole all their personal property. BEA.

Well-founded Fear/ Pattern or Practice. The Croat pattern and practice of ethnically cleansing all Serbs in the region negates the need to prove individual targeting to establish a well-founded fear or future persecution. (at 1213). "While proof of particularized persecution is sometimes required to establish a well-founded fear of future persecution, such proof of particularized persecution is not required to establish past persecution. *See* 8 C.F.R. § 1208.13(b)(1) (not mentioning any such requirement for past persecution); 8 C.F.R. § 1208.13(b)(2)(i)(C)(iii)(A) (proof of particularized persecution to establish a well-founded fear not required only where the applicant proves a pattern or practice of persecution of a protected group to which the applicant belongs); *Kotaz v. INS*, 31 F.3d 847, 852 (9th Cir. 1994) ([Hungarian granted relief on basis of antipathy to gypsies])." (at 1211). "Moreover, the Knezeviks need not demonstrate that they will be 'singled out' for persecution ... because they proved a practice of persecution against Serbs in the region." (at 1213).

Persecution/ Ethnic Cleansing. There is a "critical distinction between persons displaced by the inevitable ravages of war (e.g., the bombing of London by the German Luftwaffe during World War II), and those fleeing from hostile forces motivated by a desire to kill each and every member of that group (e.g., the destruction of the Jewish neighborhoods on the Eastern front of Europe by the Einsatzgruppen, who followed the German Wehrmacht in WWII). In the first

example, although the German armed forces intended to conquer and occupy London, they did not intend to kill every Londoner. In the latter example, the Nazi detachments did intend to kill every Jew, which made the persecution individual to each Jewish resident of an area invaded by the Nazis. The latter is persecution 'on account of' a protected status, while the former is not." (at 1211–12).

Past Persecution/ Internal Relocation Not Possible. Although it may be safe for petitioners to relocate to the Serb-held parts of Bosnia-Herzegovina, relocation is unreasonable based on their age (75 and 66), the great difficulty in finding employment, the destruction of their business and loss of all their possessions, and the fact their family members no longer reside in the country.

Well-Founded Fear/ Ten Percent Rule. "Even a ten percent chance that the applicant will be persecuted in the future is enough to establish a well-founded fear. *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001)." (at 1212–13).

***Vukmirovic v. Ashcroft*, 362 F.3d 1247 (9th Cir. 2004)**; remanding after finding petitioner was not a persecutor. Bosnian Serb did not become a "persecutor" by using force to defend his hometown against invading Croats. Although some of the skirmishes resulted in deaths and petitioner admitted breaking the noses and foreheads of Croats, he did not participate in the ethnic cleansing campaign launched by the Bosnian Serbs against the Muslims. "Vukmirovic admitted to physically harming the attacking Croats, beating them with sticks and pistols. He admitted to breaking the 'nose and foreheads' of Croats during the fights." (at 1248). THOMAS.

Bars to Asylum/ Persecutor Bar, Not Found. "Mere acquiescence or membership in an organization is insufficient to trigger the deportability provision ... [A]ctive personal involvement in persecutorial acts needs to be demonstrated before deportability may be established." (at 1252, citing *Laipenieks v. INS*, 750 F.2d 1427, 1431 (9th Cir. 1985)). Persecutor status is not established by mere membership in an ethnic category or group that has a pattern of persecution of others. A finding that the alien "ordered, incited, assisted or otherwise participated in the persecution of any person, " must be based on "'a particularized evaluation in order to determine whether an individual's behavior was culpable to such a degree that he could be fairly deemed to have assisted or participated in persecution.' *Hernandez v. Reno*, 258 F.3d 806, 813 (8th Cir. 2001). Without such an individualized assessment, qualified asylum applicants could be denied relief purely on grounds that the immigration statutes were designed to avoid—bias based on ethnicity or national origin." (at 1252).

Nexus/ Motive Not Found. Self-defense does not qualify as persecution of others, since such would not be "on account of" one of the protected grounds; active personal involvement in persecutorial acts needs to be demonstrated. "In this case, there was no affirmative evidence in the record showing that Vukmirovic had participated in physical attacks other than in the context of self-defense, " and the court rejected "ambiguous" statements to the contrary. (at 1252–53).

Bulgaria

Donchev v. Mukasey, 553 F.3d 1206 (9th Cir. 2009)
Mihalev v. Ashcroft, 388 F.3d 722 (9th Cir. 2004)
Popova v. INS, 273 F.3d 1251 (9th Cir. 2001)
Konstantinova v. INS, 195 F.3d 528 (9th Cir. 1999)
Stoyanov v. INS, 172 F.3d 731 (9th Cir. 1999)
Stoyanov v. INS, 149 F.3d 1226 (9th Cir. 1998)

> ***Donchev v. Mukasey*, 553 F.3d 1206 (9th Cir. 2009)(A95-562-817)**; affirming a denial of relief to an ethnic Bulgarian who based his claim on having been "persecuted" for being a member of a particular social group deemed as "friend of Roma." There were claims that the lead respondent had been raped as well as subjected to repeated acts of physical violence by both the Bulgarian police and "skinheads." Other family members continued to live in peace in Bulgaria. The decision contains a lengthy discussion of the case law pertaining to relief based on claims of membership in a particular social group. Respondent was found to have been credible. KLEINFELD; dissent, B. FLETCHER.

Nexus/ Motive Not Found, Central Reason; Persecution/ Random Attack. "Although the skinheads assaulted, beat, and robbed Donchev after he left a Friends of the Roma meeting, the IJ found that there was no evidence that it was "on account of" his friendships with the Roma or membership in Friends of Roma. The skinheads who took Donchevs watch and money were not policemen. The Court found that these facts support the IJ's finding that this was a crime, not persecution. The timing and location of the attacks (outside the Roma's organization meeting) alone do not compel the conclusion that Donchev was attacked because of a protected ground."

Protected Grounds/ Particular Social Group, Not Found; PSG/ Friend or Associate of Group. The majority emphasized the need for respondent to show an identifiable ethnic group and distinguished *Mihalev v. Ashcroft*, 388 F.3d 722 (9th Cir. 2004) on the primary ground that Donchev, unlike Mihalev, was ethnically Bulgarian and not Roma. The majority found that Donchev's asserted group did not have the requisite degree of "social visibility." Members of a particular social group must ordinarily be expected not to "have chosen a course of conduct that led others to harm them." The Court rejected the notion that "supporters of an ethnic, political,

or religious group are themselves a particular social group, citing to *Santos-Lemus v. Mukasey*, 542 F.3d 738 (9th Cir. 2008) and *Ochoa v. Gonzales*, 406 F.3d 1166 (9th Cir. 2005). The Court emphasized the principle from *Ochoa* that "the key to establishing a 'PSG' is ensure that the group is narrowly defined."

***Mihalev v. Ashcroft*, 388 F.3d 722 (9th Cir. 2004) (A77-584-418)**; remanding upon finding alien suffered persecution in Bulgaria. Roma (Gypsy) alien was arrested (1) for hosting a birthday party at his apartment, jailed for 10 days, beaten with sandbags each day, and forced to do heavy labor; (2) for failure to carry his id, accused of robbery, and again beaten and forced to work for two weeks; and (3) during a periodic check-in at the police station, beaten and sexually assaulted by police guard at the forced-labor site. IJ ruled alien failed to establish persecution was on account of his Gypsy ethnicity, citing the Country Report for the proposition that all criminal suspects are mistreated. While the second and third arrests may have been void of any nexus to his ethnicity, the first arrest included statements from the police officers that alien was instigating gypsy gatherings. GRABER; (KOZINSKI, dissent: Disparaging remarks made by the officers while arresting alien at the party does not lead to the conclusion that the beatings which occurred *after* the arrest were on account of his ethnicity. Derogatory comments may be sufficient to establish motive for persecution only when they are made in the course of persecuting the alien).

Persecution/ Generalized Violence. A "significant risk" of abuse prevalent throughout a country does not mean it is "a certainty that erases any possible connection between abuse and a protected ground.... Moreover, there is no requirement of having been abused more than someone else.... Asylum seekers who have fled from generally repressive regimes have no higher a burden than those who have fled from generally benign countries." (at 730).
Nexus/ Motive Found; Protected Grounds/ Ethnicity. Even though the police came to the residence after a report of excessive noise, it was found that ethnic slurs established the required nexus.

***Popova v. INS*, 273 F.3d 1251 (9th Cir. 2001) (A72-009-719)**; granting withholding and remanding after reversing BIA's "on account of" finding; (1) alien demonstrated well founded fear of future persecution "on account of" her religion and political opinion; (2) INS failed to rebut the presumption of future persecution afforded alien on account of her past persecution; and (3) alien was entitled to withholding of deportation on basis that her life and freedom were threatened; PREGERSON.

Protected Grounds/ Religion; Political Opinion, Found. Alien demonstrated well founded fear of future persecution "on account of" her religion and political opinion, making her eligible for

a discretionary grant of asylum; although alien received education and employment from her government, because of the religious connotation associated with her name and her adherence thereto, as well as her political opinions, her family suffered persecution in her youth, her education was conditioned upon her participation in a re-education process, she was harassed by supervisors and fellow employees, she was threatened by police officers, she was fired from her first job, and her salary was cut at her second job.

Past Persecution/ Changed Conditions Not Found; Individualized Analysis; Failure to Rebut. INS failed to rebut the presumption of future persecution afforded alien on account of her past persecution; although INS produced evidence illustrating that conditions in foreign country improved as general matter, it introduced no evidence to meet its burden of showing that there had been a change in conditions that would affect alien on an individual level.

Persecution/ Threats Alone; Physical Harm Not Necessary. Alien was entitled to withholding of deportation on basis that her life and freedom were threatened, although INS asserted that conditions in foreign country had changed; while she was in foreign country, police put a gun to alien's head and repeatedly threatened her with prison and anonymous callers threatened her life and freedom, and two years after she had left foreign country for United States police were looking for alien and her colleagues continued to suffer persecution. This was done without a showing of physical violence to the alien.

Withholding of Deportation/ Granted. "Popova's life and liberty were repeatedly threatened while she lived in Bulgaria. The police put a gun to Popova's head and repeatedly threatened her with prison, and anonymous callers threatened her life and freedom. Police were looking for Popova two years after she had left Bulgaria for the United States. Based upon this undisputed evidence, it must be presumed that her life and freedom would be threatened should Popova return to Bulgaria. The evidence submitted by the INS is insufficient to rebut this presumption. Indeed, the 1992 Country Report describes the continued persecution of the leader of Podcrepa, and threats by the government to imprison him for his past activities. Accordingly, we conclude that Popova is entitled to a withholding of deportation." (at 1261).

***Konstantinova v. INS*, 195 F.3d 528 (9th Cir. 1999)(A71-582-330 and A71-582-331)**; affirming BIA's denial of alien's motion to reopen asylum and withholding claims and remanding to adjudicate adjustment of status application and wave procedural defect; (1) BIA did not abuse its discretion in upholding decision not to allow reopening, but (2) BIA abused its discretion in denying motion to remand on basis of aliens' failure to include completed application for permanent residence with motion; B. FLETCHER.

Motion to Reopen/ Changed Circumstances. BIA did not abuse its discretion in upholding decision of IJ not to allow reopening of asylum application of alien who had originally sought asylum based on alleged persecution of her husband in Bulgaria for anti-Communist views, had withdrawn application based on improved country conditions, and then had sought to reopen following tensions between communists and their opponents in Bulgaria; BIA offered reasonable explanation for its decision in stating she failed to demonstrate objective basis for fear that she would be personally persecuted.

Motion to Remand/ Unopposed. BIA abused its discretion in denying alien's motion to remand deportation proceedings to allow her to pursue adjustment of status on basis of newly

approved visa petition, on basis of her failure to include completed application for permanent residence with motion when INS did not oppose the motion.

> ***Stoyanov v. INS*, 172 F.3d 731 (9th Cir. 1999) (A70-535-039)**; remanding to allow alien a reasonable opportunity to explain perceived inconsistencies; (1) BIA violated alien's due process rights by making adverse credibility finding without notice, and (2) BIA failed to set forth alternative basis for denial of asylum that would warrant affirmance of denial of asylum despite due process violation; B.FLETCHER.

Credibility/ Inconsistencies, No Attempt to Enhance Claim. Where asylum petitioner initially gives one account of persecution but then revises his or her story so as to lessen the degree of persecution he or she experienced, rather than to increase it, the discrepancy generally does not support an adverse credibility finding.
Credibility/ Opportunity to Explain. "Here, the BIA made an adverse credibility finding without affording Stoyanov any opportunity to explain the supposed inconsistencies in his written and oral testimony. Under *Campos-Sanchez*, if the adverse credibility finding 'form[ed] the basis of [the BIA's] denial of asylum, ' 164 F.3d at 450, then we must vacate the denial and remand to allow Stoyanov a reasonable opportunity to explain those inconsistencies." (at 735).

> ***Stoyanov v. INS*, 149 F.3d 1226 (9th Cir. 1998) (A29-543-966)**; Remand for reconsideration based on finding that State Department report contained an erroneous statement that affected the BIA's decision to deny asylum; TROTT.

Country Reports/ Erroneous Statement Therein. State Department report's erroneous statement that alien obtained his passport before Bulgarian parliament passed law freeing up passport issuance affected decision of BIA to deny alien's petition for asylum, warranting remand for reconsideration; BIA relied on report in concluding that alien obtained unusual privilege not available to persons in trouble with the authorities as he had claimed to be.

Burma

Khup v. Ashcroft, 376 F.3d 898 (9th Cir. 2004)

Khup v. Ashcroft, **376 F.3d 898 (9th Cir. 2004) (A75-761-859)**; remanding after finding past persecution and at least a 51% chance of torture; Alien had obtained a bona fide passport from his government and made no claim that family members had been mistreated, nor did he apply for asylum in countries in which he lived and traveled before coming to the U.S.; TASHIMA.

Persecution/ Of Friends or Affiliates. Seventh Day Adventist minister suffered past persecution when a fellow minister, who was with him when the military warned them not to preach any more, was arrested, tortured and killed, then dragged through the streets as an example to others; the military was also looking for the alien, who was forced into hiding. The finding was heavily influenced by documentary materials supporting the objective component of the claim.

Persecution/ Not Rising to Level Of. Minister's one day of forced porterage did not rise to the level of persecution because he did not suffer any ill effects and gave no indication he had been seriously abused. Although alien was made to perform hard labor in unpleasant circumstances, his main reaction was a feeling of injustice at having been made to work on the Sabbath. (at 903).

Cambodia

Kin v. Holder, _F.3d_, 2010 WL 547650 (9th Cir. 2010)
Im v. Gonzales, 497 F.3d 990 (9th Cir. 2007), *withdrawn*, 522 F.3d 966 (9th Cir. 2008)
Cheo v. INS, 162 F.3d 1227 (9th Cir. 1998)

Kin v. Holder, **_F.3d_, 2010 WL 547650 (9th Cir. 2010)(A78-112-730);** affirming a denial of relief over an adverse credibility finding. This case applied pre-REAL ID Act case law. The respondent had claimed significant physical violence inflicted because of his political opinion by the Sam Rainsy party. The adverse credibility determination was based primarily on inconsistencies between the claim as presented at hearing and that set forth in the I-589 as well as testimonial inconsistencies between different witness testimony. TALLMAN.

Credibility - Pre-REAL ID/ Omissions. The court found "significant" the omission from the I-589 of the "key political demonstration they later claimed was the basis for their arrests and subsequent persecution. . . . When confronted with the omission from the asylum hearing, Kin stated that he felt inclusion in the asylum applications was not necessary because the demonstration would be discussed at the hearing." The circuit rejected this justification.

Credibility - Pre-REAL ID/ Inconsistencies, Material. "It is not improper for the BIA to consider such inconsistencies when making credibility determinations . . . the finder of fact shoulders the responsibility of examining all of the evidence presented and deciding which version of the events is true."

Cheo v. INS, **162 F.3d 1227 (9th Cir. 1998) (A72-991-951)**; upholding IJ's denial; aliens sought asylum because armed groups tried to recruit them, they were threatened and one was beaten; KLEINFELD. *Distinguished by* *Perez-Lastor v. INS*, 208 F.3d 773 (9th Cir. 2000); *Camposeco-Montejo v. Ashcroft*, 384 F.3d 814 (9th Cir. 2004); *Ali v. Ashcroft*, 394 F.3d 780 (9th Cir. Jan. 19, 2005).

Bars to Asylum/ Firm Resettlement, Found. A three-year undisturbed stay in Malaysia was a sufficient basis for the IJ to presume that firm resettlement may apply. "A duration of residence in a third country sufficient to support an inference of permanent resettlement in the absence of evidence to the contrary shifts the burden of proving absence of firm resettlement to the applicant." (at 1229).

Persecution/ Not Rising to Level Of; Nexus/ Motive Not Found; Protected Grounds/ Ethnicity. Ethnic Chinese brothers who were smuggled out of Cambodia to avoid military recruitment, beatings and extortion, were discriminated against based on their Chinese ethnicity, but such discrimination did not rise to the level of persecution, and the military recruitment was not motivated by an animus against any group.

Im v. Gonzales, **497 F.3d 990 (9th Cir. 2007) (A79-267-088)**, ***withdrawn*, 522 F.3d 966 (9th Cir. 2008)**; reversing and remanding a denial of asylum based on the persecutor bar; B. FLETCHER.

China

Lin v. Holder, 588 F.3d 981 (9th Cir. 2009)
Li v. Holder, 559 F.3d 1096 (9th Cir. 2009)
Zhao v. Mukasey, 540 F.3d 1027 (9th Cir. 2008)
Zhu v. Mukasey, 537 F.3d 1034 (9th Cir. 2008)
Chen v. Mukasey, 527 F.3d 935 (9th Cir. 2008)
Chen v. Mukasey, 524 F.3d 1028 (9th Cir. 2008)
Huang v. Mukasey, 520 F.3d 1006 (9th Cir. 2008)
He v. Gonzales, 501 F.3d 1128 (9th Cir. 2007)
Tang v. Gonzales, 489 F.3d 987 (9th Cir. 2007)
Lin v. Gonzales, 472 F.3d 1131 (9th Cir. 2007)
Lin v. Gonzales, 473 F.3d 979 (9th Cir. 2007)
Gu v. Gonzales, 454 F.3d 1014 (9th Cir. 2006)
Lin v. Gonzales, 434 F.3d 1158 (9th Cir. 2006)
Zhou v. Gonzales, 437 F.3d 860 (9th Cir. 2006)
Quan v. Gonzales, 428 F.3d 997 (9th Cir. 2005)
Zhang v. Gonzales, 408 F.3d 1239 (9th Cir. 2005)
Qu v. Gonzales, 399 F.3d 1195 (9th Cir. 2005)
Zheng v. Ashcroft, 397 F.3d 1139 (9th Cir. 2005)
Huang v. Ashcroft, 390 F.3d 1118 (9th Cir. 2005)
Zhang v. Ashcroft, 388 F.3d 713 (9th Cir. 2004)
Ding v. Ashcroft, 387 F.3d 1131 (9th Cir. 2004)
Li v. Ashcroft, 378 F.3d 959 (9th Cir. 2004)
Lin v. Ashcroft, 377 F.3d 1014 (9th Cir. 2004)
Ge v. Ashcroft, 367 F.3d 1121 (9th Cir. 2004)

Chen v. Ashcroft, 362 F.3d 611 (9th Cir. 2004)
Guo v. Ashcroft, 361 F.3d 1194 (9th Cir. 2004)
Ma v. Ashcroft, 361 F.3d 553 (9th Cir. 2004)
Li v. Ashcroft, 356 F.3d 1153 (9th Cir. 2004)
Wang v. INS, 352 F.3d 1250 (9th Cir. 2003)
Wang v. Ashcroft, 341 F.3d 1015 (9th Cir. 2003)
Zheng v. Ashcroft, 332 F.3d 1186 (9th Cir. 2003)
He v. Ashcroft, 328 F.3d 593 (9th Cir. 2003)
Li v. INS, 92 F.3d 985 (9th Cir. 1996)

***Lin v. Holder*, 588 F.3d 981 (9th Cir. 2009)(A076-280-320);** affirming a denial of a motion to reopen. The IJ had denied the original asylum claim and the Board dismissed the appeal. Respondent filed a motion to reopen asserting "changed country conditions." She argued that because she now has children born in this country, she would be subjected to forced sterilization if she had to return to China. She submitted documentary evidence in support of her claim.

Motion to Reopen/ Changed Country Conditions, China. The court stated "we agree with [*Liu v. Atty Gen*., 555 F.3d 143 (3rd Cir. 2009)] that the Board's precedent decision . . . that the 'Chinese government does not have a national policy requiring forced sterilization of a parent who returns with a second child born outside of China." In doing so, the court accepted *Matter of J-W-S*-, 24 I&N Dec. 184 (BIA 2007).

Motion to Reopen/ Changed Circumstances, China. The court explained: "we have previously concluded that 'the birth of children outside the country of origin is a change in personal circumstances that is not sufficient to establish changed circumstances in the country of origin within the regulatory exception . . . ." *He v. Gonzales*, 501 F.3d 1128 (9th Cir. 2007). The respondent sought unsuccessfully to denominate her motion as one having to do with changed country conditions, arguing that the coercive family practices had become "more stringent."

Asylum Application/ Successive. The court would not permit the respondent to proceed on a "successive" asylum application under 8 U.S.C. § 1158(a)(2)(D), regarding "the existence of changed circumstances which materially affect the applicant's eligibility for asylum." The court relied on *Chen v. Mukasey*, 524 F.3d 1028, 1030 (9th Cir. 2008), explaining "in *Chen*, we determined that it was reasonable for the BIA to conclude that to permit such an avoidance of the time and number limits on motions to reopen by allowing a free standing claim for asylum under § 1158(a)(2)(D) would make no sense of the more restrictive exception in § 1229a(c)(7)."

Chen v. Mukasey, 524 F.3d 1028 (9th Cir. 2008); affirming the denial of a motion to reopen to pursue an asylum claim on "changed personal circumstances, " referring to the respondent having married and given birth to two children. The respondent expressed fear that if she had to return to China either she and/or her husband would be subject to a coercive family planning practice. CANBY.

Motion to Reopen/ Changed Circumstances. The court accepted and applied *Matter of C-W-L*, 24 I&N Dec. 346 (BIA 2007). The general requirements with regard to the timing and number of motions to reopen may be applied to asylum applicants notwithstanding the broader provisions of INA § 208(a)(2)(D) as they permit motions to reopen based on "the existence of changed circumstances which materially affect the applicant's eligibility for asylum." (at 1030) (internal citations omitted). The court distinguished prior case law "suggesting that aliens in Chen's position may seek asylum without a motion to reopen." (at 1033). The court upheld the denial of a CAT claim as well. In characterizing the general requirements as to a motion to reopen as "reasonable, " the court noted its agreement with *Foroglou v. Reno*, 241 F.3d 111, 113 (1st Cir. 2001) (rejecting a claim that CAT overcomes time limits for assertion of claims in deportation proceedings). (at 1033) (internal quotation marks omitted).

He v. Gonzalez, 501 F.3d 1128 (9th Cir. 2007) **(A 70 700 920)**; affirming a denial of a motion to reopen to again pursue an asylum application based on the subsequent birth of two U.S. citizen children. Respondent argued that the birth of what would now be his third child would make him "subject to forced sterilization." TALLMAN.

Motion to Reopen/ Changed Circumstances. The court cited to *Zheng v. USDOJ*, 416 F.3d 129 (2d Cir. 2005), *Wang v. BIA*, 437 F.3d 270 (2d Cir. 2006), and *Zhao v. Gonzales*, 440 F.3d 405 (7th Cir. 2005) in support of its conclusion that one cannot "establish changed circumstances sufficient to satisfy the exception to the time and number bars applicable to a motion to reopen based on the birth of children in the U.S. and the resulting threat of forced sterilization if returned to the country of origin." The court also cited approvingly to an unpublished Sixth Circuit decision in which a citizen of Guinea was found not to have established "changed circumstances" with regard to the risk of FGM being imposed on a USC child if denied relief. *Bah v. Attorney General*, 2007 WL 1338540 . Although not cited, see further, *In re A-K-*, 24 I&N Dec. 275 (BIA 2007) (finding that an alien may not establish eligibility for asylum based solely on fear that a daughter will be harmed by being forced to undergo FGM upon the return to the alien's home country). Citing *Wang*, supra, at page 270, the court agrees that where "a petitioner is seeking to reopen his asylum case due to circumstances of his own making after being ordered to leave the U.S.... it would be ironic indeed if [those] who remained in the United States illegally following an order of deportation, were permitted to have second and third bites at the asylum apple simply because they managed to marry and have children while evading the authorities." This apparent "gaming of the system" is not to be permitted.

Distinguishing *Shou Young Guo v. Gonzales*, 463 F.3d 109 (2d Cir. 2006). A motion to reopen was denied by the BIA but a petition for review was granted in a coercive family planning claim. There, the documentation was found to be "persuasive" and the birth of the U.S. child was before the entry of a final administrative order.

Gu v. Gonzales, **454 F.3d 1014 (9th Cir. 2006) (A75-653-110)**; denying rehearing en banc, withdrawing and superceding previous opinion at 429 F.3d 1209 (9th Cir. 2005). Upholding a denial of asylum to a Chinese Christian who attended a "house" or unregistered church. He had "distributed Christian religious materials." "He was arrested . . . and detained at the police station for three days . . . . [H]e was interrogated for two hours . . . . [T]he police hit his back with a rod approximately ten times." Afterward, Gu was required to sign a document admitting his guilt and was required to periodically report to a local police station. Although he maintained his government job, he was warned that he would be fired if he engaged in any further illegal activities. After the applicant came to the U.S. , "[a] friend told him not to call his family any longer because the 'public security people' came to his house to look for him. Gu believes that Chinese authorities looked for him because he had sent religious materials from the U.S. to China." There was no issue as to credibility. BEEZER; dissent by PREGERSON.

Persecution/ Not Rising to Level Of. The court, over a strong dissent, determined that Gu had not established past persecution because he was detained and beaten on only a single occasion, he did not require medical treatment, and he maintained his employment. Additionally, the court held that Gu did not establish any state-imposed limitation on his right to practice his religion, other than the prohibition on religious leafleting.

Evidence/ Hearsay. In the absence of an adverse credibility determination, the factfinder must accept the applicant's contentions as true. However, "where an asylum applicant's testimony consists of hearsay evidence, the statements by the out-of-court declarant may be accorded less weight by the trier of fact when weighed against non-hearsay evidence" because it is less persuasive than a first-hand account.

Huang v. Ashcroft, **390 F.3d 1118 (9th Cir. 2004)**; (1) all motions to reopen any proceedings that resulted in entry of final order of removal prior to March 22, 1999, in order to seek protection under the CAT, are subject to time limitation imposed by regulation implementing the CAT, without regard to form of protection, withholding of removal or deferral of removal, to which alien would be entitled if successful; (2) as prudential matter, alien against whom final order of removal was entered prior to March 22, 1999 had to first exhaust his administrative remedies, by filing motion to reopen, as prerequisite to seeking such protection in habeas corpus petition filed with district court; affirming district court's denial of habeas petition; RYMER.

Li v. Ashcroft, **378 F.3d 959 (9th Cir. 2004) (A70-011-792)**; *reh'g en banc denied*, 396 F.3d 1073 (9th Cir. 2005); upholding IJ's adverse credibility determination; FARRIS; (NOONAN, dissenting: adverse credibility determination was based solely on speculation and was fraught with arbitrariness; nothing in the record rebuts petitioner's claim that he will face persecution as the father of three sons).

Credibility/ Omissions; Inconsistencies, Material. Three prior asylum applications failed to mention that petitioner's wife had been forcibly sterilized after he was detained and threatened with sterilization himself; petitioner denied ever being persecuted by the Chinese government when interviewed at the airport; and petitioner's testimony regarding fine amounts he was ordered to pay for each additional child was inconsistent with his earlier applications. Petitioner's continued presence in the country was in hiding and does not support a lack of credibility ruling; however, the fact his wife has traveled freely to their home town without any trouble may reasonably be considered inconsistent with petitioner's claim that his family was so afraid of being arrested that it was forced to go deep into hiding. (at 964).
Credibility/ Documents To Impeach, Permitted. Prior asylum applications completed at a law firm by an assistant who reviewed the forms with the applicant in his native language and signed under penalty of perjury have impeachment value as prior inconsistent statements. (at 962).

***Wang v. INS*, 352 F.3d 1250 (9th Cir. 2003) (A72-693-706)**; upholding IJ's adverse credibility determination and denying the petition; WALLACE.

Evidence/ Authentication, Inability To. INS forensics expert's inability to determine authenticity of alien's documents does not provide a reasonable basis for concluding that the documents are anything other than what they purport to be, even though the State Department reported widespread fabrication and fraud. (at 1254).
Credibility/ IJ Speculation. Minor discrepancies in birth certificates and hospital records may be suspicious, but cannot form a reasonable basis upon which to contest credibility. "While we understand the IJ's suspicion, her basis for questioning these documents amounts to nothing more than a subjective view of what these documents would look like." (at 1255). "Speculation and conjecture may not 'substitute for substantial evidence, ' but an IJ need not ignore palpable inconsistencies in a petitioner's testimonial and documentary evidence that directly undermine his allegations of persecution." (at 1258).
Credibility/ Implausibility. Alien's obvious evasiveness in explaining his contradictory testimony was sufficient to support an adverse credibility finding. "While he claimed he did not mention the stillbirth earlier due to a superstition, apparently this superstition did not prevent him from speaking of the stillbirth one week later. It strains credulity to believe that Wang would fail to mention in either his asylum applications or his previous sworn testimony the alleged death of a stillborn child—the very incident that supposedly formed the basis for the Chinese government's alleged sterilization attempt." (at 1257). In addition, notarial certificate issued in the same district alien claimed to have fled years earlier contradicts his claim that he was concealing himself from the district authorities during the period in question. (at 1257).

***Li v. INS*, 92 F.3d 985 (9th Cir. 1996) (A72-780-312)**; denying petition to review based on findings that (1) applicant did not establish he was eligible for asylum based on his

membership in a social group of Chinese citizens with low economic status; his arrest after fight at restaurant was not persecution on account of political opinion; (3) presumption that he had well-founded fear of persecution on account of religion from arrest of family member at church was rebutted by his own testimony that he and other residents of his village continued to attend church regularly until he left; (4) his exclusion from high school did not provide basis for past persecution on account of political opinion; (5) his fear of punishment from unpaid smugglers did not amount to fear of persecution; and (6) he failed to demonstrate that punishment for illegal departure would be pretext for persecution on account of his political opinion; GOODWIN; *distinguished by* *Rodriguez-Roman v. INS*, 98 F.3d 416 (9th Cir. 1996).

***Li v. Holder*, 559 F.3d 1096 (9th Cir. 2009)(A 96 349 858);** reversing and remanding a denial of relief. The IJ had denied relief based on an adverse credibility determination and a finding that the harm complained of were not "on account of" a protected criteria. The court rejected this determination with a lengthy discussion which found that the numerous reasons cited by the IJ were either "speculation" (such as reliance on the large sum of money paid by the respondent in his travel to China), "fabricated [by the IJ] inconsistencies, " or otherwise not "going to the heart of the claim" (such as misstatments as to dates), citing *Li v. Ashcroft*, 378 F.3d 959, 964 (9th Cir. 2004). The petitioners claimed to be members of a "house church" of the "Christian" faith who assisted North Koreans who had illegally entered china and who were consequently persecuted for providing "humanitarian assistance" in violation of Chinese law. The mistreatment was from both Chinese police as well as other prisoners in a labor camp where they were sentenced. WARDLAW.

Due Process/ Translation. "We have held that an asylum applicant has a due process right to be given competent interpretation services if he does not speak English, " citing *He v. Ashcroft*, 328 F.3d 593, 598 (9th Cir. 2003) and *Perez-Lastor v. INS*, 208 F.3d 773, 778 (9th Cir. 2000). "Even where there is no due process violation, faulty or unreliable translation can undermine the evidence on which an adverse credibility determination is based. *He v. Ashcroft*, 328 F.3d at 598; *Kebede v. Ashcroft*, 366 F.3d 808 (9th Cir. 2004); *Mendoza v. Ashcroft*, 329 F.3d 655, 662 (9th Cir. 2003).

Unable or Unwilling to Control/ Private Agent. The court held that "the police were either unable or unwilling to control the beatings of Li by his fellow inmates" after finding past persecution from the beatings by other inmates, citing *Avetova v. INS*, 213 F.3d 1192, 1196 (9th Cir. 2000). "Affirmative state action is not necessary to establish a well-founded fear of persecution if the government is unable or unwilling to control those elements of its society responsible for targeting a particular individual."

Persecution/ Prosecution. In finding persecution, the court discussed how persecution arises where "the prosecution lacks legitimacy or proceeds without the process normally due" or is "disproportionately severed" or is directed at a "disfavored group." The court cited *Bandari v. INS*, 227 F.3d 1160 (9th Cir. 2000), which found that a prosecution related to "interfaith dating" was persecution because of the significant physical punishment, notwithstanding the violation of local criminal law.

Protected Grounds/ Imputed Political Opinion, Found; Political Opinion/ Actions not Words. "One who is persecuted for protesting with lawful deeds is just as worthy of asylum under our laws as one who protested with words." Hence, the fact that there was no criticism of the government's policy that "undocumented North Korean refugees should receive no aid" was found not to bar the claim based on imputed political opinion.

Credibility/ IJ Speculation. One of the IJ's bases for making an adverse credibility determination was Li's failure to know the "difference between the teachings of the Presbyterian church that he attends in Los Angeles and the teachings of the church in his hometown." The court rejected this basis, stating that "what a new Christian convert would know (or even could know) about theological positions of various denominations is pure conjecture."

***Zhao v. Mukasey*, 540 F.3d 1027 (9th Cir. 2008) (A 95 303 066)**; reversing and remanding a denial of relief to practitioners of Falun Gong. Respondents claimed both physical mistreatment and being subjected to threats. They were denied relief on the bases that they had not established sufficiently severe mistreatment to have demonstrated past persecution nor a well founded fear of future risk. Credibility was not at issue. They had been able to legally leave China on the basis of official government issued travel documents and fellow practitioners who had been arrested with them had been able to continue to live in China without any particular problem. REINHARDT.

Protected Grounds/ Religion, Falun Gong. The court cited to *Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) and *Zhou v. Gonzales*, 437 F.3d 860 (9th Cir. 2006) for the principle that any Falun Gong practitioner who continues to maintain his participation and who has had problems in the past with authorities has a well-founded fear of future persecution on the basis of religious beliefs.

***Zhu v. Mukasey*,** 537 F.3d 1034 (9th Cir. 2008) **(A78-399-579)**; reversing and remanding on credibility grounds and whether the misconduct was "on account of" a protected criteria. Respondent has been raped at work by "the factory manager who also held a political position." She sought to complain about this to local officials and she was then harassed and threatened with arrest by local officials. The IJ found her to be incredible because of inconsistencies in the record as well as a claim of being "implausible." This last position was rejected as impermissible "speculation" by the IJ. POLLAK.

Credibility/ Airport Interview. The effort to justify the adverse credibility determination based on inconsistencies from an "airport interview" was rejected. This was so even with Respondent having omitted all of the information pertaining to the rape as well as the reported efforts to arrest her after she reportedly complained to local governmental officials. *Li v. Ashcroft*, 378 F.3d 959, 962-63 (9th Cir. 2004) was cited for: "[S]tatements given during airport interviews [are not] valuable impeachment sources because of the conditions upon which they are taken and because a newly arriving alien cannot be expected to divulge every detail..." (at *5).

Nexus/ Retribution, On Account of Protected Ground; Protected Grounds/ Political Opinion, Found. The court cited to *Sagaydak v. Gonzales*, 405 F.3d 1035, 1042 (9th Cir. 2005) for the proposition that, "A victim who is targeted for exposing government corruption is persecuted on account of political opinion because retaliation for investigating or publicizing corruption by political figures is by its very nature a political act." (at *7) (internal quotation marks and citations omitted). The court found this was not a mere personal dispute between Respondent and the factory manager.

Chen v. Mukasey, 527 F.3d 935 (9th Cir. 2008) **(A75-642-340)**; remanding on the basis of whether the BIA would choose to accept the panel's determination that the withdrawal of a Form I-589, Application for Asylum and for Withholding of Removal, did not preclude the finding that the application was "frivolous." TROTT.

Asylum Application/ Frivolous. "Chen admitted that the contents of her asylum application were false, that the information she provided to an asylum officer in an April 1999 interview was false, and that the marriage and birth certificates she provided to the asylum officer were false." (at 936). Because she subsequently developed another form of relief in the form of an I-130, she withdrew the I-589 prior to any hearing thereon. The court found that because she had been explicitly warned of the consequences of filing a frivolous I-589, the fact that there was no evidentiary hearing thereon before the IJ did not preclude the finding. The court expressed its agreement with *Lazar v. Gonzales*, 500 F.3d 469 (6th Cir. 2007), which reached a similar result. However, it further noted *Zheng v. Mukasey*, 514 F.3d 176 (2d Cir. 2008), where there was a different result with regard to whether there was "ambiguity" at the pertinent provision of INA § 208(d)(6). (at 942). The majority, over the disagreement of CLIFTON, remanded the case to the Board notwithstanding it specifically finding no such "ambiguity." This was done "to allow the agency itself to speak to this issue and to attempt to avoid making a decision later undercut by a different interpretation by the BIA in *Zheng*." (at 943).

Huang v. Mukasey, 520 F.3d 1006 (9th Cir. 2008) **(A95-875-283)**; reversing and remanding a denial for failure to "make a credible finding." PER CURIAM.

Credibility/ Explicit Finding. The IJ found "numerous, significant inconsistencies" in the claim. (at 1007). "The IJ conflated what he may have intended as an adverse credibility finding...[with a further finding] that he has failed to discharge his burden" in terms of the relief he sought. *Id.* The court emphasized that the two principles had to be addressed separately.

***Tang v. Gonzales*, 489 F.3d 987 (9th Cir. 2007) (A71-565-867)**; reversing and remanding a denial of asylum. A woman became pregnant. Her claim was not before the court but that of her husband was. Her employer (as opposed to government officers), per its "policy, " took her to a clinic for a "forced abortion." She "cried and screamed but it didn't help, " nor did she "go into hiding" with regard to expressing any particular opposition; W. FLETCHER.

Persecution/ Forced Abortion. The court applied its holding in *Ding v. Ashcroft*, 387 F.3d 1131 (9th Cir. 2004), that "[a]n asylum applicant need not demonstrate that she was physically restrained during an abortion procedure to show that it was forced." *Tang*, 490 at 990 (citing *Ding*, 387 F.3d at 1139). The court rejected the IJ's reasons for finding that the abortion was not forced, including the fact that neither Tang nor his wife went into hiding to avoid the abortion, and that the procedure was by the private employer rather than pursuant to any official summons. *Id.* at 991.

Persecution/ Of Family/CPC. "In *Qu v. Gonzales*, 399 F.3d 1195 (9th Cir. 2005), we held that victims of forced sterilization were 'entitled, without more, to withholding of removal." "We conclude that, like those who have undergone forced sterilization, victims of forced abortion are 'entitled by virtue of that fact alone' to withholding of removal .... [W]e hold that Tang, as the partner of a woman who had a forced abortion, is entitled to withholding of removal as a matter of law." *Tang*, 489 F.3d at 992.

***Lin v. Gonzales*, 472 F.3d 1131 (9th Cir. 2007) (A76-868-356)**;reversing and remanding a denial of asylum. The court found that there had been "other resistance" under INA § 101(a)(42)(B) to a coercive population control program, as discussed by *Li v. Ashcroft*, 356 F.3d 1153 (9th Cir. 2004) (en banc). The court had previously reversed and remanded to the BIA on an administrative denial for failure to provide corroborating evidence. Upon remand, the Board again denied relief. Mr. Lin claimed that he had been beaten because he interfered with birth control officials who were endeavoring to seize and destroy household furnishings belonging to respondent's brother and his wife who had violated birth control policies; TROTT.

Protected Grounds/ Political Opinion/Resistance to CPC. The Board believed that "an applicant does not satisfy the resistance component unless the applicant can demonstrate that the resistance was motivated by a disapproval of birth control policies." The Ninth Circuit found Mr. Lin's position, that he met the resistance component "simply by physically interfering with birth control officials while the officials destroyed family property in accordance with birth control policies, " to be persuasive. The court held that the simple physical act of resistance, coupled with the respondent's assertion that he disagreed with the birth control policies, was sufficient to grant relief.

Lin v. Gonzales, 473 F.3d 979 (9th Cir. 2007) **(A75-011-071)**;reversing a denial of a motion to reopen with regard to an asylum claim; The respondent previously had an asylum application denied. In doing so, the IJ made a finding that the application was frivolous and that respondent "was therefore barred forever from seeking any type of immigration relief." The respondent did not appeal this decision and was removed to China. He thereafter illegally returned. He filed a motion to reopen based on "changed circumstances." In affirming the IJ's denial of the motion to reopen, the BIA held that the respondent was "permanently ineligible for any benefits under the Act, " citing section 208(d)(6); SMITH.

Motion to Reopen/ Departure from the U.S. Interpreting 8 C.F.R. 1003.23(b)(1), which states that a motion to reopen "shall not be made by or on behalf of a person who is the subject of removal, deportation, or exclusion proceedings subsequent to his or her departure from the United States, " the court held that this applies only to those who depart the U.S. during currently pending removal proceedings. The respondent by contrast, was removed to China after his removal proceedings were complete, and so the bar did not apply to him.

Regulations/ Construction Of; Ambiguity in Favor of Alien. "While the regulation may have been intended to preclude aliens in petitioner's situation from filing motions to reopen their removal proceedings, the language of the regulation does not unambiguously support this result. Because ambiguity must be construed in favor of the petitioner, we decline to adopt the government's construction of the regulation . . . ."

Removal Order/ Reinstatement Of. Both the BIA and the IJ found that they lacked jurisdiction because "the original deportation order had been automatically reinstated by operation of law upon the petitioner's illegal reentry into the U.S." The court held that the statute specified a number of steps that the government must take before the order can be reinstated. Therefore, the Board's conclusion that it lacked jurisdiction was error.

Lin v. Gonzales, 434 F.3d 1158 (9th Cir. 2006) **(A79-760-825)**; reversing an adverse credibility finding, finding past persecution, and remanding for a discretionary consideration of asylum; McKEOWN.

Persecution/ Forced Sterilization. "If Lin can prove that his wife was forcibly sterilized he is automatically eligible for asylum and withholding of removal." Following: *Qu v. Gonzales*, 399 F.3d 1195 (9th Cir. 2005) and *He v. Ashcroft*, 328 F.3d 593 (9th Cir. 2003).

Credibility/ State Department Reports, Reliance On Rejected ; IJ Speculation. The respondent submitted a series of "official" documents from Chinese public authorities to support his claim. They had omissions and inconsistencies. There was in the record the Dept. of State Report which expresses "skepticism" as to the bona fides of these types of documents. The IJ relied on this to discount the probative value to be accorded to them. The court rejected this assessment. It held there rather need be "actual evidence rather than personal speculation by the IJ." The references to the Dept. of State Report were explicitly held not to meet that standard.

Discretion/ Administrative Exercise Of, Not Upheld. "Asylum is rarely denied as a matter of discretion."

***Zhou v. Gonzales*, 437 F.3d 860 (9th Cir. 2006) (A79-602-200)**; reversing and remanding an adverse credibility finding on the basis of being an imputed supporter of a Falun Gong practitioner. The respondent did not make any claim that she had in fact been mistreated or arrested. Rather, she asserted that she had brought into China on a previous trip articles about Falun Gong that she gave a friend and that she knew it was not proper to do so. She asserted, and provided expert testimony as well as documents, that the police had searched her residence and that she had been advised by family members that the police were looking to arrest her. THOMPSON.

Credibility/ Implausibility, IJ Speculation. "Underpinning the IJ's finding that Zhou was incredible was his opinion that it was 'implausible' that Zhou 'would risk her privileged position in Chinese society, her excellent job as director of administration, her opportunity to work abroad in Singapore, and her freedom, all just to provide a mere acquaintance with the favor of illegal material." This assertion was dismissed as unwarranted "speculation." Other inconsistencies cited by the IJ in the documents were dismissed as unacceptable as was the failure to provide sufficient corroboration citing to *Sidhu v. INS*, 220 F.3d 1085, 1091-92 (9th Cir. 2000).

Protected Grounds/ Religion, Falun Gong. The court reiterated its holding in *v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) in terms of its view as to how easy it is for a citizen of China who fears persecution on the basis of an association with Falun Gong to establish the objective component of the claim. "Although there is no indication that the Chinese government believes that Zhou actually practices Falun Gong, there is no reason to believe that this will mitigate the harshness of her sanctions or detention for importing and distributing Falun Gong articles." As it, "perceives Zhou's actions as a threat to its political power."

Withholding of Removal/ Granted. The court found that the "'clear probability' of these consequences compels the conclusion that Zhou is entitled to withholding of removal." However, the court upheld a denial of relief under CAT. It again approvingly and consistently referred to Zhang: "Although the evidence in the record compels a finding that it is more likely than not that Zhang will be *persecuted* upon return to China, the likelihood of future harm amounting to torture is less pronounced. We cannot say on this record that the evidence compels us to find that Zhang meets the clear probability standard."

***Quan v. Gonzales*, 428 F.3d 883 (9th Cir. 2005) (A75-684-401)**; reversing an adverse credibility finding, finding past persecution, and remanding for a discretionary determination of asylum. An individual claimed physical mistreatment, arrest for less than a day, and firing by employer due to participation in unregistered Christian "house church." WHALEY (O'SCANNLAIN, dissenting).

Persecution/ Medical Attention. The fact that the respondent did not claim any need for medical attention did not defeat this finding. *Contra* *Guo v. Ashcroft*, 361 F.3d 1194, 1199 (9th Cir. 2004), as noted by the dissent; *Prasad v. INS*, 47 F.3d 336, 339 (9th Cir. 1995).
Credibility/ Inconsistencies, Minor. The six inconsistencies cited by the Immigration Judge were found either in fact not to be present or otherwise not supported by "substantial evidence."

***Zhang v. Gonzales*, 408 F.3d 1239 (9th Cir. 2005) (A77-297-144)**; upholding denial of withholding but remanding for discretionary consideration of asylum, even though there was no claim of any physical violence or threats to petitioner, holding that "a child of a forcibly sterilized parent is not automatically eligible for asylum;" W. FLETCHER.

Persecution/ Economic. Alien testified "her parents's [sic] resistance to China's coercive population control program caused a number of adverse economic consequences. ... As a result of the family's inability to pay the fine, Ms. Zhang was barred from attending school. Denial of access to educational opportunities available to others on account of a protected ground can constitute persecution." (at 1247–48, citing *Bucur v. INS*, 109 F.3d 399, 403 (7th Cir. 1997)).
Persecution/ Of Family. Notwithstanding "the lack of specific threats against Ms. Zhang, ... 'acts of violence committed against an applicant's friends or family can establish well-founded fear of persecution.'" (at 1249, quoting *Nagoulko v. INS*, 333 F.3d 1012, 1017 (9th Cir. 2003)).
Withholding of Removal/ Denied. Although the court remanded for a consideration of "whether the trauma Ms. Zhang suffered as a result of her father's forcible removal and sterilization, the economic deprivation she experienced, and her inability to pursue an education, when taken together, constituted persecution, " (at 1249), by finding no basis for withholding of removal, the court was denying the alien suffered past persecution that would have given rise to a presumption of a well-founded fear of future persecution. Citing to *Al-Harbi v. INS*, 242 F.3d 882, 888–89 (9th Cir. 2001) for the rule that the standard for withholding of removal is "more stringent than the well-founded fear standard governing asylum" is irrelevant, and this panel misapplied the past-persecution analysis for withholding claims.

***Qu v. Gonzales*, 399 F.3d 1195 (9th Cir. 2005) (A79-522-726)**; reversing BIA's denial of withholding and remanding; REINHARDT.

Persecution/ Of Family/CPC. Just as a husband is statutorily eligible for asylum solely by virtue of the fact that his wife has been involuntarily sterilized pursuant to a coercive population control program, he is also entitled, without more, to withholding of removal. He need make no further showing or meet any further conditions nor requirements in order to obtain such relief.
Persecution/ Forced Sterilization. "[O]ne who has suffered involuntary sterilization, either directly or because of the sterilization of a spouse, is entitled, without more, to withholding of removal." (at 1203).

***Zheng v. Ashcroft*, 397 F.3d 1139 (9th Cir. 2005) (A77-169-033)**(*amending* 382 F.3d 993); reversing IJ's credibility determination and remanding for a discretionary grant of asylum; FISHER; *declined to extend by Qu v. Gonzales*, 399 F.3d 1195 (9th Cir. Mar. 8, 2005).

Credibility/ Inconsistencies, Minor. A discrepancy of two hours between alien's testimony and his wife's written statement as to when birth control officials took his wife away cannot support an adverse credibility finding.

Protected Grounds/ Political Opinion/Resistance to CPC. China's family planning policy is not uniform across the country, but varies from region to region based on local regulation. "[R]egardless of what the official policy may be in a particular township regarding the number of children a couple is allowed to have, it is possible that corrupt officials may deviate from that policy and force a couple to abort their child even if the couple has not surpassed the legally permissible number of children."

Credibility/ State Department Reports, Reliance On Permitted. The State Department's reports may be considered when evaluating an applicant's credibility, but may only be used as supplemental evidence to discredit generalized statements made by the applicant, not to discredit specific testimony regarding individual experience. *See Duarte de Guinac v. INS*, 179 F.3d 1156, 1162 (9th Cir. 1999); *Chebchoub v. INS*, 257 F.3d 1038, 1043–44 (9th Cir. 2001). "The IJ, however, may not discredit a petitioner's testimony based on a statement in a State Department report that is itself based on speculation or conjecture. *See Shah v. INS*, 220 F.3d 1062, 1069 (9th Cir. 2000)."

***Zhang v. Ashcroft*, 388 F.3d 713 (9th Cir. 2004) (A75-740-911)**; granting withholding and denying CAT; SCHROEDER, GOODWIN, and TASHIMA.

Persecution/ Of Family. Persecution of alien's family in China for their involvement in Falun Gong activities is compelling evidence that alien would face similar mistreatment, where alien introduced his family to Falun Gong, his brother was arrested and sentenced to a reeducation-through-labor camp and his parents were arrested and forced to write self-criticism letters. (at 718).

Well-Founded Fear/ Individualized Risk. Evidence of continuing interest in alien and his family, including blaming him for distributing anti-government materials and warning his parents that he must report to the police upon his return to China, increases the likelihood of future persecution. (at 719).

Protected Grounds/ Religion, Falun Gong. Persecution of Falun Gong practitioners by the Chinese government constitutes persecution on account of religious beliefs and political opinions, despite the fact the Falun Gong movement adamantly denies being a religion or a political party. (at 720–21).

***Ding v. Ashcroft*, 387 F.3d 1131 (9th Cir. 2004) (A75-679-308)**; reversing IJ's credibility determination and finding the alien necessarily eligible for asylum; WARDLAW.

Persecution/ Forced Abortion. The lack of physical restraints during the abortion procedure does not support a finding that the abortion was voluntary, when physical force was exercised to take the alien to the hospital and birth control unit supervisors forced her on to the operating table and stood at her side during the procedure. (at 1137–38). "[A]n applicant does not need to provide evidence of physical restraint to establish the forced nature of an abortion." (at 1139). Subsequent to this decision, the Board of Immigration Appeals held that "[a]n abortion is not 'forced' within the meaning of the refugee definition ... unless the threatened harm for refusal would, if carried out, be sufficiently severe that it amounts to persecution." *Matter of T-Z-*, 24 I&N Dec. 163, 169 (BIA 2007). The Board disagreed with *Ding* to the extent that it suggests that "threats of economic harm that do not rise to the level of persecution, if carried out, would suffice to demonstrate that an abortion was 'forced' within the meaning of the statute." *Id.*

Evidence/ Authentication, Inability To. "The exclusion of documents because [they have not been authenticated] runs contrary to our long-standing principle excusing such authentication ...." (at 1135, n. 4).

***Lin v. Ashcroft*, 377 F.3d 1014 (9th Cir. 2004), amending and superceding 356 F.3d 1027 (9th Cir. 2004) (A77-340-590)**; denying a petition for further rehearing and rehearing en banc and reversing and remanding a denial of a motion to reopen to allow the respondent to further pursue an application for asylum. At the time of the hearing, the respondent was fourteen-years-old. He was represented by counsel. Lin's mother bore a second child in violation of a coercive family planning practice. The mother was reportedly sterilized. The court found ineffective assistance of counsel and a prima facie meritorious claim. B.FLETCHER.

Ineffective Assistance/ Minors. In discussing standards for effective legal representation of asylum seekers, "our concern about their proper implementation is intensified when the petitioner is a minor." 377 F.3d at 1025.

Protected Grounds/ Family. "We recognize that a family is a social group." (at 1028). "The expanded record suggests that the Chinese government was inclined to go to extraordinary lengths to punish Lin's family... Lin was separated from his parents as a result of government activity...that he was threatened personally when his mother's house was ransacked..." (at 1029).

***Matter of C-Y-Z-* as a Basis for Relief**. "Aside from Lin's membership in his nuclear family, the particular basis of his family's persecution may justify his refugee status. Congress has made plain that the forced sterilization of Zheng [the mother] constitutes persecution." (at 1030). "Zheng's forced sterilization...can be imputed to Lin's father, whose reproductive opportunities the law considers bound up with his wife." *Id.* (citing to *He v. Ashcroft*, 328 F.3d 593, 604. (9th Cir. 2003)). "His mother's misfortune is seemed to be past persecution on account of political opinion; this is in turn imputed to Lin's father as a matter of law, whether or not he had ever actually expressed such an opinion or experienced such persecution directly." (at 1034).

Ineffective Assistance/ Standard. "[T]he presentation of a few bare facts, without documentation and without the factual context that gives them meaning or the analytical

context that gives them their power, does not suffice to place the critical issues squarely before the tribunal that must consider them." (at 1029).
Persecution/ Discrimination, Of Children/CPC. "The discrimination or abusive treatment of children in families with more than one child may qualify them for refugee status." (at 1031).

***Ge v. Ashcroft*, 367 F.3d 1121 (9th Cir. 2004) (A75-667-318)**; reversing IJ's adverse credibility determination and remanding for a discretionary grant of asylum based on petitioner's wife's forced abortion; BEEZER; *declined to extend by Qu v. Gonzales*, 399 F.3d 1195 (9th Cir. Mar. 8, 2005).

Credibility/ IJ Speculation. Conjecture regarding how the Chinese government should have taken action against petitioner and his wife for violating the one child policy cannot form the basis of an adverse credibility determination. Conjecture by the IJ included statements such as: "if the government was so concerned about the respondent's violation of the one-child policy, they [sic] surely would have taken [employment] action against respondent at the time [of the first unauthorized pregnancy.]"
Evidence/ Authentication, Inability To; Credibility/ State Department Reports, Reliance On Rejected. Despite the State Department's report that some asylum applicants fraudulently present abortion certificates, it cannot be presumed that a hospital record submitted to prove that the forced abortion occurred is fraudulent. (at 1126).

***Chen v. Ashcroft*, 362 F.3d 611 (9th Cir. 2004) (A79-354-114)**; reversing IJ's adverse credibility determination; ALARCON.

Credibility/ Opportunity to Explain. Although the IJ questioned petitioner as to why she never requested official permission for her first pregnancy and received unsatisfactory excuses, by moving on to another subject the IJ denied her a reasonable opportunity to explain, "leaving this court to speculate whether Mrs. Chen did not fully understand the nature of the question due to the difficulties of translation, or whether she had feared that a fine would be assessed immediately, or worse, that she would have been required to abort her child." (at 618).
Credibility/ IJ Speculation. Speculation regarding the religious activities of petitioner's husband cannot form the basis of an adverse credibility determination; even if the finding were not based on speculation, the issue is not central to a claim of persecution based on coercive population control. "Additionally, if [petitioner]'s alleged evasiveness with regard to her husband's activities 'cannot be viewed as attempts by the applicant to enhance [her] claims of persecution, [they] have no bearing on credibility.' *Shah v. INS*, 220 F.3d 1062, 1068 (9th Cir. 2000)." (at 620).

Guo v. Ashcroft, **361 F.3d 1194 (9th Cir. 2004) (A75-735-229)**; reversing IJ's adverse credibility determination, finding that prior detention constituted persecution on account of religion, and remanding for a discretionary grant of asylum; ALARCON.

Credibility/ Opportunity to Explain. Unclear testimony, such as the testimony here regarding whether petitioner became a Christian in China or after his arrival in the United States may not serve as substantial evidence for an adverse credibility finding when the applicant is not given the chance to attempt to clarify his testimony. (at 1200).
Credibility/ Inconsistencies, Minor. Petitioner's inability to remember the name of the company he had written on his B-1 visa application was an inconsistency that does not go to the heart of his asylum claim and cannot justify an adverse credibility finding. (at 1201).
Credibility/ Misrepresentations. Making misrepresentations on an application to extend nonimmigrant status is consistent with a fear of deportation and cannot be a basis for refusing refugee status. (at 1202).
Persecution/ Detention, Protected Grounds/ Religion. Detention for a day and a half—during which alien was hit in the face, kicked in the stomach, and forced to sign a renouncement of Christianity—compels a finding that he was persecuted because of his religious beliefs. (at 1203). Alien's attempt to stop Chinese police from taking down a cross from a tomb during a funeral was resistance to discriminatory government action, which led to being beaten and detained for fifteen days. This treatment rises to the level of persecution on account of his religion. (at 1203).

Ma v. Ashcroft, **361 F.3d 553 (9th Cir. 2004) (A76-279-693)**; remanding based on finding that INA § 101(a)(42)(B) applies to husbands whose marriages would be legally recognized, but for China's coercive family planning policies, and not only to husbands whose marriages are recognized by Chinese authorities; REINHARDT.

Persecution/ Of Family/CPC. Limiting asylum eligibility to spouses whose marriage was officially recognized, and excluding husbands who marry their spouses prior to the age authorized by the Chinese policy, contravenes the purpose and policies of the statutory amendment. (at 560).
"While ordinarily we respect the marriage rules and regulations of foreign nations, including the establishment of a minimum age, ... here the entire purpose of Congress's amendment to the asylum statute is to give relief to victims of China's oppressive population control policy." (at 561).

Li v. Ashcroft, **356 F.3d 1153 (9th Cir. 2004) (A77-169-374)**; *en banc reh'g of* 312 F.3d 1094 (2002); interpreting the phrase "other resistance to a coercive population control program" and remanding; HAWKINS; (KLEINFELD, dissenting, urged the court to defer to the BIA: "Our court is not in a position to change the ideology of the Communist Party of China, nor to afford a safe harbor to all those Chinese who chafe under it."); *declined to extend by* *Qu v. Gonzales*, 399 F.3d 1195 (9th Cir. Mar. 8, 2005).

Persecution/ Forced Pregnancy Exam. Forced pregnancy examination, without any further claim of physical assault, by four birth control officials soon after alien expressed her defiance against China's early marriage and pregnancy laws was for the purpose of intimidation, not legitimate medical practice, and rose to the level of persecution. (at 1158). This was so even without any claim of subsequent adverse health effects.
Protected Grounds/ Political Opinion/Resistance to CPC. China's early marriage policy is an integral part of the population control policy; however, the court was "not presented with the question of whether resistance to the marriage-age aspect of the program alone would satisfy the statutory standard." (at 1159). Alien demonstrated resistance to the coercive population control program by telling officials she wanted "freedom for being in love, " announcing her decision to marry even after a license was refused, telling officials she intended "to have many babies" and didn't want them to interfere, and by kicking and struggling when forced to undergo a gynecological examination (at 1160).

***Wang v. Ashcroft*, 341 F.3d 1015 (9th Cir. 2003) (A73-827-084)**; (1) applicant established past persecution based upon force abortions and insertion of IUD; (2) INS failed to rebut such presumption; (3) adverse credibility determinations of BIA and IJ were not supported by substantial evidence; (4) applicant was eligible for withholding of removal; and (5) reversal, rather than remand for determination of eligibility by BIA, was appropriate. Petition granted; vacated and remanded; B.FLETCHER; *distinguished by* *Chen v. Ashcroft*, 362 F.3d 611 (9th Cir. 2004).

Persecution/ Forced Abortion. Asylum applicant established past persecution by providing evidence that both times that she became pregnant after having her first child, Chinese government, pursuant to its one-child policy, harassed her by deducting from her wages, threatening her job stability, or threatening to impose unreasonably high fines, thus forcing her to have two abortions and accept insertion of intrauterine contraceptive device (IUD). Subsequent to this decision, the Board of Immigration Appeals held that "[a]n abortion is not 'forced' within the meaning of the refugee definition ... unless the threatened harm for refusal would, if carried out, be sufficiently severe that it amounts to persecution." *Matter of T-Z-*, 24 I&N Dec. 163, 169 (BIA 2007). The Board disagreed with *Wang* to the extent that it suggests that "threats of economic harm that do not rise to the level of persecution, if carried out, would suffice to demonstrate that an abortion was 'forced' within the meaning of the statute." *Id.*
Credibility/ Inconsistencies, Minor. Adverse credibility determinations of BIA and IJ, based on inconsistencies in testimony between Chinese asylum applicant and her husband regarding such things as date of forced abortion and husband's normal work hours at time of abortion, were not supported by substantial evidence, inasmuch as inconsistencies were not material to whether applicant was forced to have abortions.
Asylum Application/ Granted to Family Member. The court greeted with incredulity the argument made by the government that a reviewing court should not concern itself with administrative inconsistencies where the applicant was denied, but her husband's case was granted on the basis of her experiences.

***Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. 2003) (A76-280-679)**; holding that in order for government official to "acquiesce" in acts of torture by private party, as required for the threat of such torture by individuals not themselves associated with foreign government to provide basis for grant of relief from removal under CAT, public official need not have actual knowledge of, or willfully accept, the torture. Petition granted; order vacated; case remanded; PREGERSON.

CAT/ Acquiescence. For government official to "acquiesce" in acts of torture by private party, public official need not have actual knowledge of, or willfully accept, the torture; rather, such "acquiescence" requires only that public official, prior to the activity constituting torture, have an awareness of such activity, whether that awareness takes form of actual knowledge or willful blindness, and thereafter breach his legal responsibility to intervene to prevent such activity.
The correct inquiry, in deciding whether illegal Chinese immigrant was entitled to CAT relief based on his reasonable fear of torture, not by government officials themselves, but by private individuals who had smuggled him out of country and against whom he had testified, was whether alien could show that public officials demonstrate "willful blindness" to the torture of their citizens by smugglers, i.e., whether they would turn blind eye to torture.

***He v. Ashcroft*, 328 F.3d 593 (9th Cir. 2003) (A76-280-045)**; reversing IJ's adverse credibility finding and remanding; W.FLETCHER; *declined to extend by* *Qu v. Gonzales*, 399 F.3d 1195 (9th Cir. 2005); *distinguished by* *Chen v. Ashcroft*, 362 F.3d 611 (Mar. 30, 2004).

Credibility/ Translation. Adverse credibility determinations of IJ and BIA, who disbelieved a Chinese national's claim that his wife had been subjected to forced sterilization for violating China's strict birth control policy, was not supported by reasonable, substantial and probative evidence; alleged problems with alien's testimony, including fact that he had indicated that sterilization procedure was performed "a little while" after his and his wife's arrival at hospital, were satisfactorily explained, inter alia, by IJ's decision not to wait for a translator who was fluent in the alien's native Chinese dialect and to instead proceed with aid of translator who spoke Mandarin, a language that alien had studied in school.

Colombia

Ochoa v. Gonzales, 406 F.3d 1166 (9th Cir. 2005)

Reyes-Guerrero v. INS, 192 F.3d 1241 (9th Cir. 1999)
Campos-Sanchez v. INS, 164 F.3d 448 (9th Cir. 1999)

***Ochoa v. Gonzales*, 406 F.3d 1166 (9th Cir. 2005) A77-421-768)**; upholding denial of asylum and withholding of removal, but remanding based on BIA's incorrect "acquiescence" standard for CAT; Colombian businessman who defaulted on his business loans was pressured by his lenders, who were narco-traffickers, to participate in a money laundering scheme. Alien's offer to give his house, car and business to pay off the loan was rejected, and fearing death, he and his wife fled to the United States. The court upheld the denial of asylum and withholding, finding that "business owners in Colombia who rejected demands by narco-traffickers to participate in illegal activity" was too broad to qualify as a particularized social group, and that there was no evidence of imputed political belief; B. FLETCHER.

CAT/ Acquiescence. The court, citing to *Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. 2003), again held that the standard set forth in *Matter of S-V-*, 22 I&N Dec. 1306 (BIA 2000), which required "government officials to be 'willfully accepting' of the feared torturous activities, " had been "overruled." Under Ninth Circuit law, "a petitioner need only prove the government is aware of a third party's tortuous activity and does nothing to intervene to prevent it." (at 1172). *Accord Reyes-Reyes v. Ashcroft*, 384 F.3d 782 (9th Cir. 2004) (homosexual from El Salvador granted CAT relief after being abused by private individuals).

Protected Grounds/ Particular Social Group, Not Found. "A social group of business persons in Ochoa's circumstances is too broad to qualify as a particularized social group. There is neither a voluntary relationship nor an innate characteristic to bond its members. ... There is no unifying relationship or characteristic to narrow this diverse and disconnected group." (at 1171, citing with approval, *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986)).

Protected Grounds/ Imputed Political Opinion, Not Found. "Here the petitioners' claim is based on a theory of political neutrality, i.e. rejecting the narco-traffickers extortionate demands was an act of political neutrality. ... [T]he record provides no evidence that the narco-traffickers imputed political beliefs to Ochoa." (at 1172, citing *Sangha v. INS*, 103 F.3d 1482, 1489 (9th Cir. 1997)).

Reyes-Guerrero v. INS, **192 F.3d 1241 (9th Cir. 1999) (A72-399-761)**; holding: (1) death threats against prosecutor were on account of his political opinion, supporting claim of well-founded fear of future persecution, and (2) INS failed to rebut presumption of well-founded fear of future persecution; petition granted; B. FLETCHER.

Persecution/Threats. Death threats against Colombian prosecutor on behalf of criminal defendants charged with scheme to embezzle funds from government pension plan and divert it to political party were on account of prosecutor's political opinion, supporting his claim for asylum based on well-founded fear of future persecution, where defendants were high-ranking members of their party, prosecutor was member of opposition party, prosecutor was told he would pay for damage done to defendants' party, and death threats continued long after defendants were convicted.

Past Persecution/ Failure to Rebut; Country Reports, Use Of Permitted. INS failed to rebut presumption that Colombian prosecutor had well-founded fear of future persecution, based on death threats on behalf of persons he had prosecuted, for purposes of asylum claim, inasmuch as 1994 State Department Country Profile for Colombia indicated that prosecutors had been assassinated and did not indicate any improvement, and letter from secretary-general of union of judicial employees included list of judges and judicial employees murdered since prosecutor fled.

Campos-Sanchez v. INS, **164 F.3d 448 (9th Cir. 1999) (A72-667-220)**; reversed and remanded; REINHARDT; *declined to extend by Pal v. INS*, 204 F.3d 935 (9th Cir. 2000).

Credibility/ Opportunity to Explain. When BIA decides an asylum case based on an independent, adverse credibility determination, contrary to that reached by IJ, it must, in order to comply with due process clause, give alien an opportunity to explain any alleged inconsistencies that it raises for the first time.

Evidence/ Corroboration Not Required. Asylum applicant is encouraged but not required to provide corroborating documents in order to establish claim of well-founded fear of persecution.

Due Process/ Notice of Adverse Credibility. BIA violated due process clause when, after IJ had found alien's testimony credible but had denied asylum on other grounds, BIA affirmed denial on credibility grounds;

Congo (Democratic Republic of Congo)

Kalubi v. Ashcroft, 364 F.3d 1134 (9th Cir. 2004)

> ***Kalubi v. Ashcroft*, 364 F.3d 1134 (9th Cir. 2004) (A78-165-833)**; reversing and remanding based on conclusion that if an asylum applicant's testimony on a particular issue is not found incredible for eligibility purposes, the testimony must be accepted as credible for exercises of discretion; Alien unsuccessfully applied for asylum in Canada; his application was denied because he was found to be a persecutor. RYMER.

Credibility/ As Applied to Discretion. "[I]f an applicant's testimony on an issue is accepted for purposes of determining whether he is statutorily eligible for asylum, the same testimony must also be accepted for purposes of determining whether he is entitled to asylum as a discretionary matter." (at 1142).

"The difficulty is that [petitioner] cannot *both* be a member of SNIP who provided no political information *and* a member of SNIP who provided information. The IJ and the BIA were obliged to accept [petitioner]'s testimony as true because there was no explicit adverse credibility finding. *Kataria v. INS*, 232 F.3d 1107, 1114 (9th Cir. 2000). This means that for all purposes in the asylum proceeding, [petitioner] was a member of SNIP but never provided SNIP with political information." (at 1138).

Discretion/ Administrative Exercise Of, Not Upheld. "Although merely being a member of an organization that persecutes others is insufficient to render an alien statutorily ineligible for asylum as a persecutor, ... a factor that falls short of the grounds of mandatory denial is not for that reason alone excluded from consideration as an adverse factor for the discretionary, entitlement prong." (at 1139).

Discretion/ Relevant Factors. Relevant factors include separation from spouse, litigating in successive forums, "membership in a terrorist organization, " as well as the factors set forth in *Matter of Pula*, 19 I&N Dec. 473–74 (BIA 1987), which include: "whether the alien passed through any other countries or arrived in the United States directly from his country; whether orderly refugee procedures were available to help the alien in any country he passed through; whether he made any attempts to seek asylum before coming to the United States; the length of time the alien remained in a third country; his living conditions while in the third country; his

safety while in the third country; the potential for long-term residency in the third country; whether the alien has relatives legally in the United States or other personal ties to this country which motivated him to seek asylum; the extent of the alien's ties to any other countries where he does not fear persecution; and general humanitarian considerations, such as his age or health." (at 1140, n.6).

Discretion/ Where Withholding Granted. In *Matter of T-Z-*, 24 I&N Dec. 163 (BIA 2007), the Board also took a narrow view of the ability to justify a denial of asylum in the exercise of discretion where withholding of removal is granted. In that case, the IJ relied on the alien's having "provided incomplete or inaccurate information in his asylum application and initial testimony regarding his employment and places of residence in this country, as well as his record of arrest and conviction." *Id.* at 166. The Board remanded the case for the Immigration Judge to "reconsider the denial of asylum to take into account factors relevant to family unification." *Id.* at 176.

Cuba

Rodriguez-Roman v. INS, 98 F.3d 416 (9th Cir. 1996)

***Rodriguez-Roman v. INS*, 98 F.3d 416 (9th Cir. 1996)**; remanding upon finding petitioner would face severe punishment for illegal departure; REINHARDT; *distinguished by* *Kozulin v. INS*, 218 F.3d 1112 (9th Cir. 2000); *Al-Harbi v. INS*, 242 F.3d 882 (9th Cir. 2001).

Persecution/ Prosecution. Punishment for the crime of illegal departure qualifies as persecution for asylum eligibility purposes when the punishment would be severe. "A petitioner may establish persecution within the meaning of the statute if he can show that he left or remained away from his homeland for political reasons and that, if returned, he would be subject to severe punishment, whether as a result of criminal prosecution or otherwise." (at 429). Three years imprisonment, the sentence for persons convicted of unlawful departure in Cuba identified in the State Department's report, is undeniably a severe sentence and qualifies as persecution. (at 431).

Egypt

Morgan v. Mukasey, 529 F.3d 1202 (9th Cir. 2008)
Ramadan v. Gonzales, 479 F.3d 646 (9th Cir. 2007), *pet for rhrg en banc denied*, 504 F.3d 973 (9th Cir. 2007)
Mansour v. Ashcroft, 390 F.3d 667 (9th Cir. 2004)
Malty v. Ashcroft, 381 F.3d 942 (9th Cir. 2004)
Tawadrus v. Ashcroft, 364 F.3d 1099 (9th Cir. 2004)

Ramadan v. Gonzales, 479 F.3d 646 (9th Cir. 2007), *pet for rhrg en banc denied,* **504 F.3d 973 (9th Cir. 2007)**; upholding the denial of relief to an Egyptian woman. Her view was: "a woman should have her own opinion and should have her own way of living." (at 649). She also dressed in western attire, such as mini skirts, and did not wear a hajib. Due to her opinions and dress, she encountered problems with the men in her family and also other Islamic men. She testified that her father and brothers would beat her, and that members of a nearby mosque would call her names and talk to her in a vicious way. She also received phone threats from Muslim groups such as Jama Islamia whose members would intercept her while walking home. The police were not able to provide any effective response. After she had been in the U.S. and continued to set forth her opinions, in particular at a meeting in San Francisco, she "received a call...indicating that someone was looking for her and that they would 'teach her a lesson' if she returned." HAWKINS.

Bars to Asylum/ One Year Bar, Found. In this decision on rehearing, the court held that it has jurisdiction to review denials of asylum on the basis of an untimely filed application. The respondent had entered the U.S. in September 1999, and she did not file her asylum application until June 2001. Her women's rights activities in the U.S. and further threats received because of those activities were found not to be sufficient to upset the administrative finding regarding a lack of "changed circumstances."

Withholding of Removal/ Denied. The court emphasized the much higher showing required for withholding of removal as opposed to asylum. The court did not find past persecution, and it held that the more severe threats made against Ramadan since her entry into the United States "at best support the inference" that she has a well-founded fear of future persecution for purposes of withholding, "they do not compel it."

> ***Mansour v. Ashcroft*, 390 F.3d 667 (9th Cir. 2004) (A75-519-415)**; rejecting IJ's implicit adverse credibility determination, but upholding the IJ's finding of no past persecution and no well-founded fear of future persecution; petition denied and dismissed; BEEZER (PREGERSON, dissenting in part, argues that Coptic Christians are a significantly disfavored group in Egypt and that petitioners suffered past persecution).

Credibility/ Articulable Basis. The IJ made an impermissible implicit adverse credibility finding by stating he was *troubled* by certain inconsistencies in the record that made petitioner's credibility *suspect*.

Protected Grounds/ Religion. "[Alien] testified that he feared persecution because as 'a Coptic Christian I've been persecuted everyday [sic], mentally, maybe some physically' ... he was struck by Arabic teachers '[w]ith a whip if he had it, if he doesn't have a whip with his hands in my face.' ... Christian children were often struck for no reason. ... [a] brother had to seek medical attention because [assailants] 'opened his head with a rock.' ... [A relative allegedly] was killed because he was an outspoken Coptic Christian." (at 670–71).

Persecution/ Discrimination. Notwithstanding the court finding the aliens to be credible, they had not established the objective component of the claim because "'[d]iscrimination on the basis of race or religion, as morally reprehensible as it may be, does not ordinarily amount to 'persecution' within the meaning of the Act.'" (at 672–73) (quoting *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995) ("where private discrimination is neither condoned by the state nor the prevailing social norm, it clearly does not amount to 'persecution' within the meaning of the Act.")). Petitioner's evidence and testimony established that Coptic Christians are subject to discrimination within Egypt on account of their religion, but such discrimination does not rise to the level of persecution. (at 673).

Well-Founded Fear/ Continued Family Presence. Continued presence of family members in Egypt, who have been able to obtain university educations and employment after graduation, demonstrates that petitioner does not have an objectively reasonable fear of future persecution. (at 673).

Protected Grounds/ Disfavored Group. The majority did not accept the dissent's assertion of disfavored group membership by noting that while there was certainly "discrimination" against

Coptic Christians, it did not rise to the required level to establish the existence of a disfavored group.

Morgan v. Mukasey, **529 F.3d 1202 (9th Cir. 2008) (A95-294-903)**; reversing a denial of relief primarily on credibility grounds. The respondents were Coptic Christians. They reported significant violence and threats made against them and family members by Muslim extremists. The IJ denied relief on the basis of eight material inconsistencies in the testimony. The court found that they were either not in fact inconsistent or were the product of impermissible speculation. NOONAN.

Evidence/ Testimony, Exclusion Of. The court found error in the IJ's decision to exclude the testimony of the respondents' children because they "were not on the pretrial witness list." (at 1210). This "was not reason for their exclusion once their mother's credibility was put in doubt and they were in a position to corroborate her." *Id.*

Malty v. Ashcroft, **381 F.3d 942 (9th Cir. 2004) (A72-441-899)**; reversing BIA's denial of motion to reopen upon finding submitted evidence established changed circumstances in the treatment of Coptic Christians in Egypt and a prima facie basis for relief; remanded; REINHARDT.

Motion to Reopen/ Changed Circumstances. Evidence regarding changed circumstances will almost always relate to the initial claim, and the critical question is whether the new evidence is qualitatively different from the evidence presented at the hearing and that circumstances have changed sufficiently that a petitioner who previously did not have a legitimate claim for asylum now has a well-founded fear of future persecution. (at 945).

Motion to Reopen/ Corroborative Evidence. The court required nothing more than alien's affidavit and a supportive report from a private human rights organization. Reports of events occurring after petitioner's hearing, including mass arrests and torture of approximately 1,000 Egyptian Coptic Christians, murders of numerous Coptic Christians on account of religion, the arrest of the Secretary-General of the Egyptian Organization for Human Rights, and of a growth in the tax that Christians pay to be defended from Muslims, together with a declaration of six separate incidents of violence against petitioner's family members in Egypt—all of which occurred after his asylum hearing—was sufficient to establish changed circumstances warranting the reopening of his case.

Well-Founded Fear/ Ten Percent Rule. "A well-founded fear does *not* require proof that persecution is more likely than not; even a ten percent chance of persecution may establish a well-founded fear. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987); *see also Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001)." (at 948).

***Tawadrus v. Ashcroft*, 364 F.3d 1099 (9th Cir. 2004) (A75-521-788)**; remand based on the absence of an effective waiver of counsel; HAWKINS.

El Salvador

Zetino v. Holder, _F.3d_, 2010 WL 555334 (9th Cir. 2010)
Aguilar-Ramos v. Holder, 594 F.3d 701 (9th Cir. 2010)
Delgado v. Holder, 563 F.3d 863 (9th Cir. 2009)
Santos-Lemus v. Mukasey, 542 F.3d 738 (9th Cir. 2008)
Arteaga v. Mukasey, 511 F.3d 940 (9th Cir. 2007)
Reyes-Reyes v. Ashcroft, 384 F.3d 782 (9th Cir. 2004)
Hernandez-Mezquita v. Ashcroft, 293 F.3d 1161 (9th Cir. 2002)
Rodas-Mendoza v. INS, 246 F.3d 1237 (9th Cir. 2001)
Molina-Morales v. INS, 237 F.3d 1048 (9th Cir. 2001)
Ernesto Navas v. INS, 217 F.3d 646 (9th Cir. 2000)
Rivera-Moreno v. INS, 213 F.3d 481 (9th Cir. 2000)
Leiva-Montalvo v. INS, 173 F.3d 749 (9th Cir. 1999)
Del Carmen Molina v. INS, 170 F.3d 1247 (9th Cir. 1999)
Aguilar-Escobar v. INS, 136 F.3d 1240 (9th Cir. 1998)

***Zetino v. Holder*, _F.3d_, 2010 WL 555334 (9th Cir. 2010)(A94-175-859);** affirming the denial of relief. The decision primarily discusses the discretionary basis of the BIA to refuse to consider an untimely brief. The claim was nonetheless considered on the merits. The basis of the claim was that "in 1993 six members of his family had been killed by gunfighters attempting to steal his grandfather's land." Some farmers who were supposedly his grandfather's friends; they wanted more land so they could cultivate. Respondent also testified that he feared gang members would attempt to recruit or harm him and that he would face potential "revenge" if he were to return. He further expressed concern that he had "tattoos . . . and they would mistake him for being a rival gang member." Credibility was not at issue. The case was decided under the REAL ID Act standards, but this was not significant in terms of the holding. TALLMAN.

Nexus/ Motive Not Found; **Persecution/ Criminal Motivation**. The court concurred that, with respect to the killing of his relatives, the incidents were "clearly a personal dispute." The court affirmed that neither the killing of his relatives nor his fear of the gangs bears a nexus to a protected ground. The respondent implied that the only motivation for the murders was the lang itself. "An alien's desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground."

Due Process/ Untimely Filing. The respondent "cannot point to anyone but himself to explain the untimeliness. . . . We cannot conclude that by missing the deadline he had successfully extended he somehow deprived himself of due process. The court found that *Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002) was no longer "good law, " where no jurisdiction permitted the review of a denial by the Board to sua sponte review an untimely motion to reopen.

Santos-Lemus v. Mukasey, 542 F.3d 738 (9th Cir. 2008)**(A 98-298-858)**; affirming a denial of asylum and related relief to an individual who, along with his family, had been mistreated and threatened by a criminal gang. Respondent's brother had been robbed and beaten. The gang continued to pursue him for "revenge" even though there had been no contact with law enforcement authorities. An older brother was shot and killed and the "gang had sent many anonymous notes threatening the family." A younger brother was robbed and harassed. The respondent himself was beaten, threatened, and robbed. WALLACE.

Protected Grounds/ Family. The court upheld the denial of relief on the basis of the "mother's continued safety in his hometown." This was so even with the recognition "she is a female and the Maras gang targeted young males in El Salvador and not older females" in that the testimony had been that the "entire family was targeted by the Maras."

Protected Grounds/ Particular Social Group, Not Found; PSG/Gangs. The court found that the proposed PSG of "young men in El Salvador resisting gang violence" did not have the requisite degree of "social visibility" nor "well defined boundaries, " nor could the "group be defined with sufficient particularity to delimit its membership." The court cited with approval *Matters of A-M-E*, 24 I&N Dec. 69 (BIA 2007) and *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008).

Protected Grounds/ Political Opinion, Not Found. Notwithstanding the assertion that respondent was "anti-gang and that he manifested this opinion in expressing resistance against the Mara, " this argument was not accepted. "Resistance to a gang's recruitment efforts alone [does not] constitute political opinion." Rather, respondent "was victimized for economic and personal reasons." The court cited with approval from *Ochave v. INS*, 254 F.3d 859, 864 (9th Cir. 2001): "asylum generally is not available to victims of civil strife, unless they are singled out on accord of a protected ground. . . persecution on account of political opinion. . . cannot be inferred from acts of random violence by [people] who may have divergent political views." "Without evidence of an actual political opinion or motive in Santos-Lemus's or the gang's actions, his claim fails."

CAT/ More Likely Than Not, Not Found; Public Official. Again in denying this claim, the court emphasized that "his mother had remained unharmed." The respondent's "fears would be committed by private individuals, not the government, and the Salvadoran government was not even aware that [respondent and his brothers] had been targeted by the gang because the incidents were never reported. . . ."

***Arteaga v. Mukasey*, 511 F.3d 940 (9th Cir. 2007) (A92-085-513)**; affirming a denial of relief based on a claim of membership in a particular social group (PSG). The respondent came to the U.S. at age four as an LPR. He joined a gang at age fourteen. The gang engaged in violence. "Arteaga testified that while some members of his gang committed crimes, such as trading in drugs and stealing, he did not." (at 943). Still, he was convicted of theft and possession of drugs. "Boiled down, his argument rests ultimately on his claim that his tattoos mark him for potential persecution." (at 945). Credibility was not an issue. TROTT.

Protected Grounds/ Particular Social Group, Not Found; PSG/Gangs. Even assuming the tattoos to be "indelible, " the court agreed with *Castellano-Chacon v. INS*, 341 F.3d 533 (6th Cir. 2003), that "tattooed gang member" would be "overbroad" notwithstanding the social group being defined under different formulations. (at 945). This would be so even assuming he had left the gang by the time of his asylum application. "One who disassociates himself from a group may fall analytically into a definable category, but the category of non-associated or disaffiliated persons in this context is far too unspecific and amorphous to be called a social group, whether the person is tattooed or not." *Matter of A-M-E*, 24 I&N Dec. 69 (BIA 2007) (at 946).With regard to the alternative argument of "his unique and shared experience as a gang member, " this would not be considered an "innate" characteristic. (at 945). The court distinguished other case law where such was held to constitute a PSC. *Hernandez-Montiel v. INS*, 225 F.3d 1084, 1094 (9th Cir. 2000)(finding gay men with female sexual identities as a social group)or *Sanchez-Trujillo v. INS*, 801 F.2d 1571, 1576 (9th Cir. 1986) (identifying members of a family as a social group).

Protected Grounds/ Family. Citing to *Sanchez-Trujillo v. INS*, 801 F.2d 1572, 1576 (9th Cir. 1986), the court stated that membership in a family is deemed as an "innate characteristic which is so fundamental to the identities or consciences of its members they cannot or should not be required to change it." (at 944).

Refugee Law/ Purpose Of. "To do as Arteaga requests would be to pervert the manifest humanitarian purpose of the statute in question and to create a sanctuary for universal outlaws."(at 946).

Aggravated Felony/ Theft. The court rejected the argument that in order for the theft conviction to be deemed an aggravated felony, "the intent to permanently deprive another of property" must be demonstrated. The court relied on *Gonzales v. Duenas-Alvarez*, 127 S. Ct. 815, 820 (9th Cir. 2007), which holds that a theft conviction can be an aggravated felony, "even if such deprivation is less than total or permanent." (at 947) (internal quotation marks omitted). The court distinguished *U.S. v. Vidal*, 504 F.3d 1072 (9th Cir. 2007), which held that such conviction under the California theft statute would not be an aggravated felony because one could have been convicted as an accomplice after the fact because the record of conviction established that

the conviction was for "taking a vehicle with the intent to either permanently or temporarily deprive the owner of possession-a theft offense."(at 947).

CAT/ More likely Than Not, Not Found. The court's recognition of information in the record such as a statement from a "[m]agistrate" that "if [Arteaga were] deported, he will suffer indefinite detention and likely death or physical abuses at the hands of rival gangs and detention authorities will not provide him with adequate protection, " (at 940, 949), was not found to meet the requisite burden of proof that the risk of torture was more likely than not.

***Hernandez-Mezquita v. Ashcroft*, 293 F.3d 1161 (9th Cir. 2002) (A20-527-254)**; upholding IJ's denial of special rule cancellation under NACARA based on alien's failure to file an asylum application; decided on equal protection and due process grounds without addressing merits of asylum claim; petition denied; W.FLETCHER.

***Molina-Morales v. INS*, 237 F.3d 1048 (9th Cir. 2001) (A29-458-905)**; denying petition based on finding that persecution was not related to alien's affirmative political beliefs; TASHIMA; (B.FLETCHER, dissenting, argued that the political component outweighed the personal in finding persecution on account of imputed political opinion, in that politician's political status during his race for mayor would have been greatly affected by news of his commission of rape and that he was able to enlist the assistance of the local police to suppress the report.); *distinguished by* *Ventura v. INS*, 264 F.3d 1150 (9th Cir. 2001).

Protected Grounds/ Imputed Political Opinion, Not Found. Violence and threats against alien, for reporting to police that a local ARENA party leader had raped his aunt, were on account of a personal matter and not on account of any imputed political opinion. (at 1051).

Nexus/ Motive Not Found. Molina argues that his reporting of the rape of his daughter was construed "as an act against the ARENA party" and that the significant physical mistreatment he suffered "was on account of an imputed political opinion." (at 1051). "Molina does not assert that he ever expressed views that may have been construed as political opposition ... Nor is Molina a member of a large, politically active family, many of whom may have already been persecuted for their political beliefs." (at 1051–52).

Nexus/ Retribution, Not On Account of Protected Ground. Disappearance of alien's aunt was due solely to her reporting of the rape, and there was no evidence that ARENA leader's supporters presumed sympathy on her part or alien's part for an opposing political view. "The mere fact that Salazar was a politician does not compel a conclusion that Molina was persecuted on account of any political opinion his persecutors imputed to him. Salazar's part-time profession as a politician is merely incidental." (at 1052).

Rivera-Moreno v. INS, **213 F.3d 481 (9th Cir. 2000)**; upholding IJ's ruling that alien's expression of political neutrality to guerrillas was not causally connected to bombing of her house, and she thus was not persecuted because of her neutrality; petition denied; ALDISERT.

Protected Grounds/ Political Opinion/Neutrality. Asylum applicant's expression of political neutrality to guerrillas in Perquin, El Salvador in 1980, when they forced her to provide nursing services to wounded, was not causally connected to bombing of her house by guerrillas in San Miguel, El Salvador in 1989, which followed guerillas' discovery that she was nurse and her refusal to join them, and she thus was not persecuted because of her neutrality; record contained no evidence that applicant expressed political neutrality in the eight years between the two incidents, and she expressed no political views to guerrillas in 1989.

Aguilar-Escobar v. INS, **136 F.3d 1240 (9th Cir. 1998) (A29-276-080)**; holding that any persecution suffered by alien because of her government job was not on account of race, religion, nationality, membership in particular social group, or political opinion; mandate stayed to allow application for NACARA relief; GOODWIN.

Nexus/ Motive Not Found. Any persecution suffered by alien in El Salvador because of her government job of bus dispatcher, her husband's position as police officer, and another relative's position as mayor of town, and because of armed conflict between police and government forces on the one hand and anti-government guerillas on the other, was not on account of a protected criteria that government could not control.

Aguilar-Ramos v. Holder, **594 F.3d 701 (9th Cir. 2010)(A36-330-584)**; reversing and remanding a claim with regard to protection under the CAT. Respondent had been convicted of robbery in 1990 and "petty theft with priors" in 2003. He was a lawful permanent resident. Finding that review of the denials of asylum and withholding of removal had not been properly preserved to allow their consideration, the court considered only the respondent's CAT claim. The respondent had "expressed fear that police and gangs will harass, persecute, and kill him because his multiple tattoos and status as a deportee from the U.S. will mark him as a gang member even though he is not." The Department of State country report had been admitted to the record but had not been specifically mentioned by the Board. The respondent also presented the report and testimony of his expert that he would be at great risk if he was to return. Credibility was not at issue. PREGERSON.

REAL ID Act/ Reliance On Prior Case Law. As with Velasco-Cervantes v. Holder, (9th Cir. 2010), the court made no reference to the REAL ID Act and relied on pre-REAL ID Act case law, despite the fact that the application was filed after the effective date of the REAL AD Act.

CAT/ Country Conditions. "Even if the IJ correctly concluded that Aguilar's testimony *by itself* was insufficient to meet his burden under CAT, this conclusion would not be dispositive because a CAT applicant may satisfy his burden with evidence of country conditions alone" (emphasis in orginal). *Kamalthas v. INS*, 251 F.3d 1279, 1284 (9th Cir. 2001) (holding that a negative credibility finding for purposes of an asylum claim does not preclude relief under CAT where documented country conditions corroborate a claim of torture").

CAT/ Acquiescence. "There is evidence in the record that suggests that gangs and death squads operate in El Salvador, and that its government is aware of and willfully blind to their existence." *Zheng v. Ashcroft*, 332 F.3d 1186, 1194-95 (9th Cir. 2003) (there is no requirement to show "actual knowledge or willful acceptance of torture; awareness and blindness will suffice"). "We do not mean to suggest that a gang member can never be deported to El Salvador. On remand, we merely hold that the BIA and IJ must consider all the evidence presented by Aguilar and state those conclusions in the record."

Waiver/ 212(c). Because respondent had been convicted of an aggravated felony "crime of violence, " he was found ineligible for a waiver under section 212(c), as it does not have a "statutory counterpart with a ground of inadmissibility." The court cited *Abebe v. Mukasey*, 554 F.3d 1203, 1208 (9th Cir. 2009) (en banc), upholding *Matter of Brevia*, 23 I&N Dec. 766 (BIA 2003).

> ***Delgado v. Holder*, 563 F.3d 863 (9th Cir. 2009)(A 78-461-226);** granting a petition for rehearing and withdrawing the published decision of *Delgado v. Mukasey*, 546 F.3d 1017 (9th Cir. 2008) which had affirmed a denial of relief. The Court now remands the case on the basis that the respondent's criminal record, which contained three felony convictions for drunk driving - "one involved an injury accident, and two resulted in prison terms of less than five years [sentences of 12, 16, and 24 months]" - did not amount to "particularly serious crimes" disqualifying the petitioner from asylum. CANBY; Dissent and concurrence by BERZON.

Bars to Asylum/ Particularly Serious Crime, Not Found. The court stated its disagreement with *Alaka v. AG*, 456 F.3D 88 (3rd Cir. 2006) that a "particularly serious crime" offense must be an aggravated felony. It accepted the holding in *Matter of N-A-M-*, 24 I&N Dec. 336, 338-39 (BIA 2007). The court found that it had jurisdiction to review the "particularly serious crime" determination with regard to asylum claims, citing *Morales v. Gonzales*, 478 F.3d 972 (9th Cir. 2007), and held that the Board's finding of "particularly serious crime" in this case was an abuse of discretion under *Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982). The court briefly mentioned *Anaya–Ortiz v. Mukasey*, 553 F.3d 1266, 1275-76 (9th Cir. 2009), in which it upheld the administrative finding of ineligibility because of a conviction for a "particularly serious crime, " to note that the BIA is permitted "to consider all reliable information in making a PSC determination." *But see* amended decision in *Anaya-Ortiz v. Holder*, 594 F.3d 673 (9th Cir. 2010).

In addition, the Court determined that it lacked jurisdiction to review the "particularly serious crime" determination with regard to withholding of removal.

CAT/ More Likely Than Not, Not Found; Country Reports/ To Rebut CAT claim. The denial of relief under CAT was affirmed. "Country reports indicate that conditions in El Salvador have improved significantly since Delgado left the country and there is no longer evidence of politically motivated violence, killings, or disappearance in El Salvador." The court made such finding notwithstanding major problems which the respondent's parents had previously experienced at the time of the civil war.

***Reyes-Reyes v. Ashcroft*, 384 F.3d 782 (9th Cir. 2004) (A77-973-761)**; remanding without addressing the merits of petitioner's claim, based on the IJ's use of an incorrect standard for CAT and withholding; Alien, a "homosexual male with a female sexual identity, " was brutalized by private individuals in El Salvador, and presented documentary materials to support the proposition that the government of El Salvador does not adequately provide protection, "detailing El Salvador's hostile political and cultural climate towards male homosexuals with female identity." (at 786); McKEOWN; (BYBEE, concurring, found the IJ had correctly stated the legal standard for acquiescence under CAT, but failed to address whether any public official might have been aware of the activity).

CAT/ Acquiescence. IJ's inquiry as to whether petitioner feared torture by someone in the government or acting on behalf of the government, failed to address torture that may be inflicted *with the consent or acquiescence* of the government. (at 787). "If the torture is at the hands of private individuals, the [alien]'s burden is to show the government's 'consent or acquiescence, ' . . . [which] is not limited to 'actual or willful acceptance'; the 'willful blindness' of government officials suffices. *Zheng v. Ashcroft*, 332 F.3d 1186, 1194–95 (9th Cir. 2003)." (at 787).

***Rodas-Mendoza v. INS*, 246 F.3d 1237 (9th Cir. 2001) (A70-536-728)**; (1) determination that applicant's fear of persecution was unreasonable in light of changed country conditions was supported by substantial evidence, and (2) finding that rape of applicant's niece, after she came to the US, provided no reasonable basis for fear of persecution was supported by substantial evidence; additionally, fear expressed of a cousin was not found to be "on account of" one of the protected criteria because he was not under "government control" petition denied; SCHROEDER, WALLACE, and TALLMAN; *distinguished by Tokatly v. Ashcroft*, 371 F.3d 613 (9th Cir. 2004).

Well-founded Fear/ Continued Applicant Presence. Farabundo Marti National Liberation Front (FMLN) member who had been persecuted sporadically between 1978 and 1980, fled to the capital, San Salvador, and continued to participate in FMLN for 11 years without incident, demonstrating that she no longer had a well-founded fear of future persecution.

Persecution/ Random Attack. The rape of applicant's niece, who was not an FMLN sympathizer, was isolated, random act of violence that was not motivated by animosity toward FMLN members and provided no reasonable basis for fear of persecution.

***Ernesto Navas v. INS*, 217 F.3d 646 (9th Cir. 2000)**; reversing and remanding upon finding (1) persecution of alien by members of El Salvador's military was on account of political opinion, and (2) Court of Appeals would hold that applicant was statutorily eligible for asylum, rather than remanding to allow BIA to consider country conditions; REINHARDT; *distinguished by* *Shoafera v. INS*, 228 F.3d 1070 (9th Cir. 2000); *Dinu v. Ashcroft*, 372 F.3d 1041 (9th Cir. 2004); *Molina-Morales v. INS,* 237 F.3d 1048 (9th Cir. 2001); *Gafoor v. INS*, 231 F.3d 645 (9th Cir. 2000).

Persecution/ Threats, Of Family. Applicant suffered "persecution" within meaning of asylum statute where he was threatened with death in El Salvador, two members of his family were murdered, he was shot at, and his mother was beaten.

Protected Grounds/ Political Opinion, Found. Persecution of alien by members of El Salvador's military, including death threats, shooting at him, murdering his aunt and uncle, and beating his mother, was on account of his political opinion. The government conceded that the murder of his uncle was political; his aunt had been married to member of Frente Farabundo Marti para la Liberacion Nacional (FMLN), soldiers who murdered aunt were aware that alien had distributed political materials, and soldiers' actions were not motivated solely by desire to avoid prosecution.

***Leiva-Montalvo v. INS*, 173 F.3d 749 (9th Cir. 1999) (A73-754-865)**; (1) substantial evidence did not support determination of BIA that alien did not suffer persecution in El Salvador on account of his political views; (2) Government failed to rebut presumption that alien had well-founded fear of future persecution; and (3) alien was entitled to withholding of deportation; petition granted; KRAVITCH.

Protected Grounds/ Political Opinion, Found. Substantial evidence did not support determination of BIA that asylum applicant did not suffer persecution in El Salvador on account of his political views; alien testified that "Recontras" harassed, detained, threatened, and shot at him, that they were interested in him because of his older brothers' previous affiliation with El Salvador's guerillas, and that all his discussions with "Recontras" centered on politics and ideology.

Past Persecution/ Changed Conditions Not Found; Country Reports/ To Rebut Past Persecution, Insufficient. Government failed to rebut presumption that the applicant had a well-founded fear of future persecution; the State Department report describing improvements in El Salvador's human rights record following 1992 Peace Accords did not show that conditions in El Salvador changed significantly between early 1995 and date of hearing.

Past Persecution/ Failure to Rebut. Alien was entitled to withholding of deportation to El Salvador, inasmuch as he presented evidence that "Recontras" had specifically threatened his

life at least twice, creating presumption that he was entitled to withholding of deportation, and government failed to introduce sufficient evidence of changed country conditions to rebut presumption.

> ***Del Carmen Molina v. INS*, 170 F.3d 1247 (9th Cir. 1999) (A70-994-883)**; remanding based on unsupported determinations of the BIA that the interest in the applicant shown by guerillas in El Salvador did not amount to persecution, and that any persecution was not "on account of" actual or imputed political opinion; PREGERSON; *distinguished by* *Chand v. INS*, 222 F.3d 1066 (9th Cir. 2000).

Protected Grounds/ Imputed Political Opinion, Found. In proceeding on an alien's applications for asylum and withholding of deportation, determinations of the BIA that the interest in the alien shown by guerillas in El Salvador did not amount to persecution, but rather to an interest by the guerillas in recruiting her, and that any persecution was not "on account of" actual or imputed political opinion, were not supported by reasonable, substantial, and probative evidence; though the alien's mother and two sisters still resided in El Salvador, there was uncontradicted testimony by the alien that her cousins and their families were killed because the cousins were in the military, that the guerillas had sent applicant threatening notes, and that she did not agree with the guerillas' opinion.

Eritrea

Zehatye v. Gonzales, 453 F.3d 1182 (9th Cir. 2006)
Nuru v. Gonzales, 404 F.3d 1207 (9th Cir. 2005)

> ***Zehatye v. Gonzales*, 453 F.3d 1182 (9th Cir. 2006) (A79-243-418)**; affirming a denial of relief. There was no issue as to credibility. The respondent was a Jehovah's Witness. She did not participate in the 1993 referendum on Eritrean independence and otherwise would

not perform military service. As a result, her father's business was "confiscated" and the family lost their housing. There was no claim to any physical abuse. There was the threat, as mentioned in the dissent, that because she would not serve, "the police were planning to take her into custody the very night she fled Eritrea." CALLAHAN. Dissent by BERZON, attacking the IJ ad hominem for being "intemperate."

Country Reports/ To Rebut Past Persecution, Sufficient. The majority cited extensively from the Department of State reports to presumably find that the objective component of the claim had not been made out.

Persecution/ Economic. The loss of the home and the father's livelihood were found insufficiently egregious (even taking into account the testimony that a sister died of pneumonia due to cramped living conditions) to come within the rule of *Gormley v. Ashcroft*, 364 F.3d 1172, 1178 (9th Cir. 2004) "mere economic disadvantage alone does not rise to the level of persecution."

Persecution/ Forced Conscription. The court relied on the Department of State report, which did not establish that Jehovah's Witnesses were singled out because of their religious beliefs. While "conscientious objectors may establish a persecution claim if they can demonstrate that they were selected for mistreatment because of their religious beliefs, " *Canas-Segovia v. INS*, 970 F.2d 599 (9th Cir. 1992), forced conscription or punishment for evasion of military duty generally does not amount to persecution. Although the refusal to serve in the military may be a religious practice, "this alone cannot satisfy the requirement of demonstrating his persecutor's motive or intent." Here there was no evidence of serious or disproportionate punishment fo refusing to serve in the military.

***Nuru v. Gonzales*, 404 F.3d 1207 (9th Cir. 2005) (A77-954-387)**; granting withholding and CAT, and remanding for a discretionary grant of asylum based on finding (1) previous punishment by military officials constituted torture, (2) alien would likely face similar treatment, and (3) military punishments were torture, not a lawful method of punishment; approvingly cited to by the Attorney General in *Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006); Alien sought relief on the basis of having "voiced his political opposition to the war" to his military superiors during military conflict with the Sudan, for which he suffered significant physical mistreatment as a result thereof. (at 1213). The IJ in denying relief, found him to be a "common deserter" and a "coward, " characterizations that were found by the court to be "impermissible speculation" under *Bandari v. INS*, 227 F.3d 1160, 1167 (9th Cir. 2000); REINHARDT.

CAT/ Torture, Found. "The severe form of cruel and inhuman treatment to which Nuru was subjected by the Eritrean army falls well within the definition of torture set forth in the Convention. *See Al-Saher [v. INS*, 268 F.3d 1143, 1147 (9th Cir. 2001)] (holding that actions that were 'specifically intended by officials to inflict severe physical pain on [the petitioner]' constituted torture)." (at 1218). "[P]ast torture is ordinarily the principle factor on which we rely

when an applicant who has previously been tortured seeks relief under the Convention, " (at 1218). "[T]he punishment he would likely receive constitutes torture, [and] the fact that he may be punished for desertion rather than, or in addition to his opposition to the Sudanese war, is of no consequence. ... [T]orture is *never* a lawful means of punishment." (at 1220, emphasis in original). Hence, while "pain or suffering arising ... from lawful sanctions" is excluded from CAT, "a government cannot exempt torturous acts from CAT's prohibition merely by authorizing them as permissible forms of punishment in its domestic law." (at 1221). "In finding that Nuru was tortured, we also necessarily determined that the acts committed by the military rose to the level of persecution." (at 1224).

Nexus/ Mixed Motive. "Although Nuru's flight from his country (and possibly the military) might provide a substantial part of the motivation for the persecutory actions in which his government would likely engage on his return, there is little doubt that the political opposition Nuru expressed to the Sudanese war while in the military would also play a part in the future retaliatory conduct." (at 1229).

CAT/ Internal Relocation. "[I]t will rarely be safe to remove a potential torture victim on the assumption that torture will be averted simply by relocating him to another part of the country." (at 1219).

Protected Grounds/ Political Opinion, Found. Even though it was a violation of military discipline to have spoken against the war with Sudan, and all deserters from the army would be subject to punishment; the court still found past persecution and a well-founded fear of future persecution "on account of" actual and imputed political opinion. *See also* *Barraza-Rivera v. I.N.S.*, 913 F.2d 1443 (9th Cir. 1990) (finding that harm to an applicant drafted into the army and given an order to commit an atrocious act at the pain of significant punishment constituted a well-founded fear of future persecution on account of a protected ground). Accord, *Tagaga v. I.N.S.*, 228 F.3d 1030 (9th Cir. 2000) and *Ramos-Vasquez v. I.N.S.*, 57 F.3d 857 (9th Cir. 1995).

Ethiopia

Mengstu v. Holder, 560 F.3d 1055 (9th Cir. 2009)
Tekle v. Mukasey, 533 F.3d 1044 (9th Cir. 2008)
Hadera v. Gonzales, 494 F.3d 1154, (9th Cir. 2007)
Abebe v. Gonzales, 432 F.3d 1037 (9th Cir. 2005)
Ali v. Ashcroft, 394 F.3d 780 (9th Cir. 2005)
Yeimane-Berhe v. Ashcroft, 393 F.3d 907 (9th Cir. 2004)
Kebede v. Ashcroft, 366 F.3d 808 (9th Cir. 2004)
Desta v. Ashcroft, 365 F.3d 741 (9th Cir. 2004)

Shoafera v. INS, 228 F.3d 1070 (9th Cir. 2000)
Belayneh v. INS, 213 F.3d 488 (9th Cir. 2000)

***Desta v. Ashcroft*, 365 F.3d 741 (9th Cir. 2004) (A74-802-759)**; upholding IJ's denial of asylum based on an adverse credibility determination; W.FLETCHER; *distinguished by Elian v. Ashcroft*, 370 F.3d 897 (9th Cir. 2004).

Credibility/ Inconsistencies, Material; Documents To Impeach, Permitted. Substantial evidence supported IJ's determination that alien's documents relating to his membership in the AAPO were possibly fraudulent, and that their genuineness went to the heart of his claim. The adverse credibility determination was further supported by material inconsistencies in testimony concerning the extent of his injuries and the circumstances of his wife's rape.

***Belayneh v. INS*, 213 F.3d 488 (9th Cir. 2000) (A70-776-777)**; upholding denial of asylum based on a determination alien did not have a well-founded fear of persecution and was not deserving of humanitarian asylum; petition denied; THOMAS.

Persecution/ Not Rising to Level Of; Protected Grounds/ Imputed Political Opinion, Not Found; Nexus/ Motive Not Found. Substantial evidence supported decision of BIA that Ethiopian asylum applicant did not have well-founded fear of persecution based on her political views or any views imputed to her because of her association with her former husband, who had been colonel under government of Haile Selassie; only persecution suffered by applicant was brief detention over 20 years ago, there was no evidence alleged persecutors imputed to applicant her former husband's views, applicant and former husband had been divorced over 15 years, and government of Ethiopia had changed twice in the interim.
Past Persecution/ Humanitarian Asylum, Denied. BIA did not abuse its discretion in denying asylum sought on humanitarian grounds by Ethiopian applicant, inasmuch as she never claimed to have been raped while being detained by authorities, there was scant evidence of attempted rape, she testified to attempted rape only in passing, and, although her adult son had been granted asylum, his claim rested on different factual predicate from hers, and country conditions had changed since his application was granted.

***Mengstu v. Holder*, 560 F.3d 1055 (9th Cir. 2009)(A96 146 985);** reversing and remanding a denial of asylum originally based on respondent's failure to demonstrate a lack of "nexus" between a protected ground and the mistreatment complained of. The court found that the respondent, an Ethiopan of Eritrean descent, was in effect denaturalized and obligated to leave Ethiopia at a time of considerable conflict with Eritrea. There was no claim of any physical violence or threat. The IJ found that Mengstu was not subject to past persecution because she had been a "war refugee." The respondent then lived in Sudan for two years before coming to the U.S. without any particular problem after having been legally admitted to the country. The IJ had in the alternative denied relief on the theory of "firm resettlement" in Sudan. NELSON.

Protected Ground/ Ethnicity/War Refugee. "The Ethiopian-Eritreatn civil war was ethnically tinged." The court cited a number of decisions for the proposition that "persons fleeing or remaining outside of their country for reasons pertinent to refugee status qualify . . . regardless of whether those grounds have arisen during the conflict." *Ndom v. Ashcroft*, 384 F.3d 743, 753 (9th Cir. 2004); *Sinha v. Holder*, 556 F.3d 774 (9th Cir, 2009); *Ahmed v. Keisler*, 504 F.3d 1183, 1195 (9th Cir. 2007); *Knezevic v. Ashcroft*, 367 F.3d 1206, 1211 (9th Cir. 2004). "Like the Seventh Circuit, we find it "arguable that such a program of denaturalization and deportation is in fact a particularly acute form of persecution, " citing *Haile v. Gonzales*, 421 F.3d 493, 496-97 (7th Cir. 2005).

Bars to Asylum/ Firm Resettlement, Not Found. "DHS bears the initial burden of showing that the government of the third country issued to the alien a formal offer of some type of official status permitting the alien to reside in that country indefinitely, " citing *Majaraj v. Gonzales*, 450 F.3d 961, 976 (9th Cir. 2006) (en banc); *Ali v. Ashcroft*, 394 F.3d 780, 789-90 (9th Cir. 2005); *Camposeco-Montejo v. Ashcroft*, 384 F.3d 814, 820-21 (9th Cir. 2004) (finding periods of residence of five and sixteen years in a third country without an offer of permanent legal status could not justify a finding of firm resettlement). The IJ's finding was reversed because "the government did not meet this burden."

***Tekle v. Mukasey*, 533 F.3d 1044 (9th Cir. 2008) (A97-369-313)**; reversing and remanding a denial of relief. The respondent sought relief based on her activities with the Oromo Liberation Front for which she reported significant abuse. The IJ gave 8 reasons for finding her incredible in what he described as a "herculean" well over 75 minute oral decision. (at *10). He also made comments about the court's credibility case law, which was disputed upon its review. FLETCHER, W.

Credibility/ Opportunity to Explain; Hesitant to Respond; Implausibility; Discrepancy, Dates. The court rejected several reasons cited by the IJ for disbelief that the application was filed close to the one year filing deadline. Those reasons included the respondent having "deferred, delayed, or hesitated before answering certain questions, " the respondent mixing up the dates between the western and Ethiopian calendars, and the IJ's belief that certain events were inherently implausible. (at 10, no. 3). An inconsistency relied upon could not stand in that an opportunity was not extended to "explain" such. Similarly, the court did not find that an inability to accurately restate certain terms that may reasonably be interrelated in a lay person's

mind, such as "arrest" and "custody, " constituted a justifiable basis for an adverse credibility determination.

Hadera v. Gonzales, 494 F.3d 1154 (9th Cir. 2007) **(A28-419-736)**; reversing and remanding based on the designation of the country of removal. The respondent argued that he was stateless. He had been born in Italy to parents of Ethiopian nationality. His parents had listed him as a citizen of Ethiopia on documents submitted to the government, including his successful application for lawful permanent residence. He had never actually been to Ethiopia and had traveled to the U.S. from Italy. However, Italy does not accord citizenship to those simply born there. FERGUSON.

Country of Removal/ Designation. "[A]n IJ must assign a country of removal." (at 1156). When the respondent declines to designate a country of removal (step 1), the IJ must designate a country of removal by designating the country under 8 U.S.C. § 1231(b)(2)(D) of which the Respondent was: "a subject, national, or citizen" of the country (step 2). (at 1156). Only in the event that no country meets that definition may the IJ designate a country where the respondent has a "lesser connection" under step 3. (at 1157). The court concluded that "the only country that would have met any of these descriptions [of a lesser connection] is Italy." (at 1158). One cannot "presume the petitioner's citizenship without making a factual finding on that issue." (at 1159).

Step 4 of Designation. Under *Jama v. ICE*, 543 U.S. 335 (2005), the IJ may only reach step 4 if no country meets the requirements for a designation under steps 1 through 3. *(*at 1157). In that event, the IJ may designate "another country whose government will accept the alien into that country." *Id.* (at 1157). The court noted that if Italy rejected Hadera or if removal to Italy proved to be impracticable, inadvisable, or impossible, "the IJ might re-designate Ethiopia under step 4." *(*at 1159). "Under step 4, Ethiopia would have to agree in advance to accept Hadera prior to such designation." (at 1159, no. 2).

Abebe v. Gonzales, **432 F.3d 1037 (9th Cir. 2005) (*en banc*) (A72-693-580)**, *rev'g* **379 F.3d 755 (9th Cir. 2004);** reversing *en banc* a panel decision, which had upheld a denial of relief in a case based on the risk of infliction of female genital mutilation (FGM) to a United States citizen daughter. Notwithstanding the court's holding on the FGM issue, it went out of its way to evaluate the "political persecution argument" and to find that the denial on that basis was "supported by substantial evidence." The case was remanded and the court stated that "we do not reach the issue of whether Petitioners, parents of a U.S. citizen child likely to face persecution in her parents' native country, may derivatively qualify for asylum." CLIFTON.

Derivative Claims/Asylum. Although not explicitly discussed by the majority, this decision must be viewed as an extension of *Tchoukhrova v. Gonzales*, 404 F.3d 1181 (9th Cir. Apr. 21, 2005), *vacated and remanded by* 127 S. Ct. 57 (2006). As pointed out by the dissent, the suggestion of the BIA doing anything under the present facts but granting asylum upon the remand is "illusory" in that "the majority implicitly assumes that the parents of a U.S. citizen child are nonetheless

entitled to claim derivative asylum relief based on the possibility that their citizen child would be subjected to FGM... Although the practice of FGM is considered persecution under our law there is no threat here since a U.S. citizen child cannot be deported to the country of parents' birth, and the parents cannot claim an unrecognized form of derivative relief when they themselves cannot establish entitlement to asylum." This point of view is underscored by the majority's rejection of the "political persecution argument" which formed the only other part of the request for asylum.

Protected Grounds/ Imputed Political Opinion, Not Found; Nexus/ Motive Not Found. The lead respondent's parents were supporters of the Derg government of Ethiopia. After it was overthrown, they had been imprisoned by the present government for "two weeks and were denied their civil rights, including the right to vote." With the exception of one sibling who was "an active Derg supporter, " other siblings have remained in Ethiopia largely without incident." The lead petitioner had received a scholarship to study abroad under the Derg, but under the current government his "passport was renewed so that he could remain abroad and continue to take advantage of the scholarship." The lead respondent after coming to the U.S. joined "a political organization that opposes the" present government and in doing so "attended meetings, helped recruit members, and attended a conference." Because he had not received any specific threats as a result of the above, the court found that he failed to demonstrate that he "would be persecuted because of his actual or imputed political activities."

Persecution/ FGM. Although the respondent had made it clear that they would not want their daughter to be subjected to FGM; the facts that the Department of State materials reflected a high proportion of women having FGM and that the family would be "rejected...if she opposed this ritual" more than met the 10% test of a future risk.

Ali v. Ashcroft, **394 F.3d 780 (9th Cir. 2005) (A75-261-419).** *See* **Somalia** (Somali refugees refuted resettlement in Ethiopia).

Yeimane-Berhe v. Ashcroft, **393 F.3d 907 (9th Cir. 2004) (A75-534-002)**; remanding to the IJ after reversing an adverse credibility determination based solely on the submission of a counterfeit hospital report; TASHIMA.

Credibility/ Documents to Impeach, Rejected. An adverse credibility determination cannot be made solely because the alien submitted a counterfeit document, when there is no evidence the alien knew the document was counterfeit. (at 912).

Persecution/ Detention; Rape; Physical Harm. Alien claimed past persecution based on her participation in the All-Amhara People's Organization (AAPO). She was arrested with other demonstrators in 1993 and detained for a month under harsh conditions (fed only once a day and not permitted to use restrooms). In June 1994, soldiers disrupted an AAPO meeting, arrested her, and detained her for six months, during which time she was interrogated regarding her involvement and beaten four or five times, as well as raped. She was hospitalized after an attempted suicide and released on bond when a family friend signed a document. A warrant was subsequently issued for her arrest.

Credibility/ Documents to Impeach, Permitted. Applicant presented an outstanding warrant for having jumped bail and a certificate from the hospital. INS Forensics concluded the hospital certificate was counterfeit, but didn't challenge the authenticity of the warrant for petitioner's arrest. The court noted that in *Akinmade v. INS*, 196 F.3d 951, 955–56 (9th Cir. 1999), it was held that the use of fraudulent documents to gain entry into the United States could not serve as a basis for an adverse credibility determination because the documents were merely incidental to the claim. "It does not follow from this holding, however, that the converse is necessarily true—that is, that the use of one allegedly fraudulent document that may go to the heart of an asylum claim automatically is determinative of an adverse credibility finding, especially when there is no indication or finding by the IJ that the petitioner knew the document was fraudulent." The use of a fraudulent document may lend support to an adverse credibility finding, but is insufficient alone. (at 911).

***Kebede v. Ashcroft*, 366 F.3d 808 (9th Cir. 2004) (A70-064-558)**; reversing IJ's adverse credibility determination and remanding to determine if past persecution was so atrocious as to make alien eligible for asylum even though there was little likelihood of future persecution; petition granted and remanded; GOODWIN.

Credibility/ Shame. Unwillingness to discuss her rape or to report it in her asylum interview and application could not form the basis of an adverse credibility determination when she stated she was "embarrassed" to have done so. (at 809). This was so even with what was considered by the court to have been "minor memory lapses and inconsistencies on issues at the periphery of her asylum claim." None of the proffered reasons seriously call into question the fact and nature of alien's rape.

Nexus/ Motive Found. Soldier's statement during the rape that alien was getting her due because "You had your time in the previous government, " combined with a regular program of searching the family, was sufficient evidence that the attack was at least in part motivated by alien's family's authority and position in the Selassie regime and that this was not an isolated incident.

Past Persecution/ Changed Conditions Not Found. "A petitioner may be eligible for asylum on the basis of past persecution alone, 'even where there is little likelihood of future persecution.' *Acewicz v. INS*, 984 F.2d 1056, 1062 (9th Cir. 1993)." (at 812). A finding of changed country conditions to justify denial was not accepted even though the regime that had engaged in the persecutory acts had long since been overthrown.

***Shoafera v. INS*, 228 F.3d 1070 (9th Cir. 2000) (A72-439-539)**; remanding after finding alien's rape by government official was motivated at least in part by her ethnicity; PREGERSON; (WALLACE, dissenting, argued that circuit precedent allowed implicit adverse credibility findings, and that here the IJ made a partial adverse finding, going specifically to the basis for the rape).

Nexus/ Motive Found; Persecution/ Rape; Credibility/ Corroboration Provided; Protected Grounds/ Ethnicity. Rape of alien by government official of Tigrean ethnicity was motivated at least in part by applicant's Amharic ethnicity, and applicant thus was persecuted "on account of" ethnicity; she gave uncontroverted and credible testimony that she was raped because she was Amharic, no evidence supported conclusion of IJ that her testimony was speculative, and her testimony was corroborated by her sister's testimony and by documentary evidence.
Past Persecution/ Individualized Analysis. Presumption that asylum applicant was eligible for asylum, created by finding of past persecution, could be overcome only by individualized analysis of her situation which would demonstrate that changed conditions in her country of origin had eliminated the basis for her individual fear of future persecution.

Fiji

Sinha v. Holder, 556 F.3d 774 (9th Cir. 2009)
Maharaj v. Gonzales, 450 F.3d 961 (9th Cir. 2006)
Kumar v. Gonzales, 439 F.3d 520 (9th Cir. 2006)
Narayan v. Ashcroft, 384 F.3d 1065 (9th Cir. 2004)
Faruk v. Ashcroft, 378 F.3d 940 (9th Cir. 2004)
Lal v. INS, 268 F.3d 1148 (9th Cir. 2001)
Gafoor v. INS, 231 F.3d 645 (9th Cir. 2000)
Tagaga v. INS, 228 F.3d 1030 (9th Cir. 2000)
Chand v. INS, 222 F.3d 1066 (9th Cir. 2000)
Lata v. INS, 204 F.3d 1241 (9th Cir. 2000)
Kumar v. INS, 204 F.3d 931 (9th Cir. 2000)
Pal v. INS, 204 F.3d 935 (9th Cir. 2000)
Singh v. INS, 134 F.3d 962 (9th Cir. 1998)
Prasad v. INS, 101 F.3d 614 (9th Cir. 1996)
Surita v. INS, 95 F.3d 814 (9th Cir. 1996)
Singh v. INS, 94 F.3d 1353 (9th Cir. 1996)

***Kumar v. Gonzales*, 439 F.3d 520 (9th Cir. 2006) (A73-419-830)**; affirming a denial of relief. The respondents consisted of a family who were ethnic Indian. Mr. Kumar testified that he had been active in the Labor Party. Around the time of the 1987 coup, he "was punched in the stomach and around his face and verbally abused. He testified that he still has scars from this incident. One of the soldiers grabbed and squeezed Mrs. Kumar." In the 1991 incident, Mr. Kumar testified that he was insulted and could no longer practice his religion outside of his home. In a 1994 incident, Mr. Kumar testified that he felt that he was the subject of a deliberate automobile accident because of his race. The majority found that, even with the cumulative effect of all the incidents, neither past persecution nor a well founded fear of future persecution had been established. SILVERMAN. There was a dissent by WARDLAW which found the events to constitute past persecution.

Persecution/ Not Rising to Level Of; Protected Grounds/ Ethnicity. The court cited cases of the proposition that "persecution is an extreme concept that does not include every sort of treatment our society regards as offensive." *Ghaly v. INS*, 58 F.3d 1425, 1431 (9th Cir. 1995). "While the ethnic slurs and physical confrontations the Kumars endured are regrettable, the evidence presented does not compel reversal." The decision refers to other holdings denying Fijian claims: *Prasad v. INS*, 47 F.3d 336 (9th Cir. 1995) and *Singh v. INS*, 134 F.3d 962 (9th Cir. 1998).

***Lata v. INS*, 204 F.3d 1241 (9th Cir. 2000) (A72-130-508)**; upholding denial of asylum based on findings that (1) alleged incident in which alien was accosted by native Fijians could not alone support her asylum claim, and (2) alien was not prejudiced by alleged ineffective assistance of paralegal; petition denied; O'SCANNLAIN.

Credibility/ Inconsistencies, Material. Adverse credibility finding with regard to alien seeking asylum was supported by significant and relevant discrepancies between her asylum application, in which she alleged a group of youths accosted her for money and threw rocks at her, and her later testimony at evidentiary hearing that two men prepared to assault her sexually, and that she fled without being chased or having rocks thrown at her. "The only explanation that Lata offers for the discrepancy in the testimony is the embarrassment she felt at revealing the sexual nature of the second version in front of her family. At the evidentiary hearing, Lata was able to testify outside the presence of her family members; presumably she could have filled out her asylum application privately also, or offered an explanation of why she could not. She was also interviewed by the INS pursuant to her written asylum application, which provided her with an opportunity to amend her written statement, again outside the presence of her family if she so wished. Even if we were to find Lata's explanation for the discrepancy in her two stories plausible, the IJ was clearly justified in questioning her credibility based on these two very different narratives. Lata's explanation can hardly be characterized as compelling the opposite result." (at 1245).

Well-Founded Fear/ Continued Applicant Presence. Alleged incident in which Fijian of Indian descent was accosted by native Fijians could not alone support her asylum claim, where she did not leave Fiji until many months after alleged incident occurred, she was never again troubled by native Fijians, and her sister continued to live without difficulty in same town.

Persecution/ Generalized Violence; Not Rising to level Of. General claims by Fijian of Indian descent of broad ethnic tension across Fijian society did not establish the persecution required for asylum claim.

> ***Kumar v. INS*, 204 F.3d 931 (9th Cir. 2000) (A71-948-710)**; upholding denial of asylum based on findings that (1) changed country conditions rebutted any presumption that alien possessed well-founded fear of future persecution, and (2) alleged incidents of persecution were not so severe as to constitute atrocious persecution that would override changed country conditions; petition denied; O'SCANNLAIN; *distinguished by Chand v. INS*, 222 F.3d 1066 (9th Cir. 2000).

Past Persecution/ Humanitarian Asylum, Denied. Alleged incidents of persecution of Fijian based on her Indian descent and political beliefs, consisting of soldiers stripping her in front of her parents and fondling her, threatening to kill her, dragging her from Hindu temple and demanding at gunpoint that she change her religion, and knocking her unconscious, were not so severe as to constitute atrocious persecution that would override changed country conditions so as to warrant grant of asylum for humanitarian reasons.

> ***Pal v. INS*, 204 F.3d 935 (9th Cir. 2000)**; upholding denial of asylum based on (1) finding that alien did not credibly establish eligibility for asylum were supported by substantial evidence, and (2) BIA did not violate alien's due process rights when it rested its decision on certain grounds not referenced by IJ; petition denied; O'SCANNLAIN; *distinguished by Mendoza Manimbao v. Ashcroft*, 329 F.3d 655 (9th Cir. 2003).

Credibility/ Documents To Impeach, Permitted. Finding of BIA, that alien did not credibly establish eligibility for asylum based on alleged persecution in Fiji on account of her Indian descent, Hindu religion, and support for Labor Party, was supported by substantial evidence, including contradictions between her testimony and doctor's letter as to when alleged rape occurred, and fact that, although same doctor purportedly wrote letters for alien and her husband, the signatures were strikingly different.

Credibility/ Inconsistencies, Material. Finding of BIA, that alien did not credibly establish eligibility for asylum based on alleged persecution in Fiji on account of her Indian descent, was supported by substantial evidence, including contradictions in her testimony as to when her jaw was broken by native Fijians. "Mrs. Pal claimed that her attackers were members of the military based only on the fact that they were carrying weapons. But her attackers were not wearing uniforms and during the turmoil following the coup, many individuals other than members of the military were likely carrying weapons. Moreover, though Mrs. Pal stated that the reason the military men who attacked her were not wearing uniforms was fear of getting reported, she simultaneously insisted that members of the military would never get in trouble even if reported." (at 938).

Singh v. INS, **134 F.3d 962 (9th Cir. 1998) (A72-400-174)**; upholding denial of asylum based on finding that alien did not suffer persecution on account of her Indian origin or Hindu faith; petition denied; RHOADES; *distinguished by Avetova-Elisseva v. INS*, 213 F.3d 1192 (9th Cir. 2000).

Persecution/ Generalized Violence. "Mere generalized lawlessness and violence between diverse populations, of the sort which abounds in numerous countries and inflicts misery upon millions of innocent people daily around the world, generally is not sufficient to permit the Attorney General to grant asylum to everyone who wishes to improve his or her life by moving to the United States without an immigration visa." (at 967). Evidence did not compel finding that alien suffered persecution in Fiji on account of her Indian origin or Hindu faith that would entitle her to asylum; ethnic Fijians' alleged acts of throwing rocks at her house and stealing her property were not severe, alien did not leave Fiji until five years after coup which established regime favoring ethnic Fijians, and alleged destruction of alien's temple was not directed toward her individually.

Persecution/ Not Rising to Level Of; Discrimination. "Persecution" upon which asylum can be based does not require bodily harm or threat to life or liberty, but it is an extreme concept that does not include every sort of treatment our society regards as offensive. Discrimination on basis of race or religion, as morally reprehensible as it may be, does not ordinarily amount to "persecution" upon which asylum can be based.

Well-Founded Fear/ Continued Applicant Presence. "Moreover, the record indicates that Petitioner's circumstances in Fiji were not so severe that she had to flee; indeed, she waited until five years after the coup to leave. In fact, Petitioner has admitted that when she left Fiji she intended to return, but when she arrived in the United States she liked it here and decided to stay. (A.R. at 49.) One would expect that if Petitioner truly had experienced persecution, she would have left the country earlier and would have not intended to return. Significantly, Petitioner has stated that she left Fiji not because of persecution, but primarily because of a lack of educational and employment opportunities for her daughter." (at 969).

Sinha v. Holder, **556 F.3d 774 (9th Cir. 2009)(A 79 286 957)**; reversing and remanding a denial involving a claim by an Indo-Fijian who had reported acts of violence directed at him and his family by ethnic Fijians. Credibility was not at issue. The IJ denied relief on several bases, including the lack of a "nexus" to a protected ground. The Court rejected the IJ's conclusion that the violence was "random" as unsupported. BERZON.

Nexus/ Motive Found. "The use of ethnic slurs in the course of an attack ' amply establishes the connection between the acts of persecution and ethnicity." Citing *Baballah v. Ashcroft*, 367 F.3d 1067, 1077 (9th Cir. 2003).

Protected Grounds/ Disfavored Group; Well-Founded Fear/ Pattern or Practice. "Under 8 C.F.R. 208.13(b)(2)(iii), if an asylum applicant can show that there is a sufficiently systematic 'pattern or practice' of persecuting members of the protected group to which he belongs in his home country, he need not show evidence of a particularized threat to him to make out a well-founded fear of future persecution." *See* *Quan v. Gonzales*, 428 F.3d 883, 889 (9th Cir. 1999); *Knezevic v. Ashcroft*, 367 F.3d 1206 (9th Cir. 2004); *Mgoian v. INS*, 184 F.3d 1029, 1035 (9th Cir. 1999) . . . Evidence of the pervasive mistreatment of an oppressed ethnic group makes it easier, not harder, for an individual member of that group to meet his burden of showing that there is at least a ten percent chance that he will be individually targeted in the future. *Chand v. INS*, 222 F.3d 1066, 1076 (9th Cir. 2000)."

Persecution/ Of Family; Of Friends or Affiliates. "Harm to a petitioner's close family members or associates may be relevant to assessing whether the petitioner suffered past persecution. *Mashiri v. Ashcroft*, 383 F.3d 1112, 1121 (9th Cir. 2004), *Korablina v. INS*, 158 F.3d 1038, 1044 (9th Cir. 1998)."

***Maharaj v. Gonzales*, 450 F.3d 961 (9th Cir. 2006) (*en banc*)(A71-788-923 et al.)**; reversing a denial of relief by a panel, 416 F.3d 1088 (9th Cir. 2005), and remanding. The panel had found that a four-year period of legal residence in Canada constituted "firm resettlement." The family had applied for asylum but left before their application was acted upon because "they believed the grass was greener on the other side of the border." The parents had received significant physical trauma including breaking "two of his ribs" and the wife being raped because of their asserted political activities.; RYMER. Dissent by O'SCANNLAIN.

Dissent. O'Scannlain, the author of the panel decision, agreed that a remand to consider changed country conditions in Fiji was warranted with respect to the Maharajs' request for withholding of removal. But he restated his former believe that there had been firm resettlement in Canada and that the majority's decision "invites abusive country shopping." He then went on to note the practical impossibility of the DHS ever meeting the evidentiary standard set forth by the majority to establish firm resettlement. "Simply, the majority's construct will hamstring DHS to an intolerable and unreasonable degree in future asylum proceedings."

Bars to Asylum/ Firm Resettlement, Not Found. The DHS has to make at least a prima facie showing "that the alien had an offer of some type of official status permitting him to reside in the third country indefinitely." If that showing is made, the burden then shifts to the alien to show that he is not firmly resettled.

Past Persecution/ Individualized Analysis; Country Reports, Use Of Rejected; Country Reports/ To Rebut Past Persecution, Insufficient. The panel had upheld the finding that the claim should be denied on the basis of changed country conditions. As to the father, the panel noted that he "failed to show that his minor role in an election 18 years ago . . . would motivate similar persecution today and the Country Reports contain evidence of a significant lessening of political and racial tension since 2000." Nevertheless, the en banc court held that the Board did not make "make an individualized determination as to the effect of country conditions." The general reference to the Department of State country reports was not found to be adequate.

***Narayan v. Ashcroft*, 384 F.3d 1065 (9th Cir. 2004) (A77-382-105)**; remanding after finding evidence compelled conclusion that acts against alien cumulatively amounted to persecution and BIA had failed to separately address alien's motion to remand for consideration of newly available evidence of worsened country conditions; HAWKINS; *distinguished by* *Circu v. Ashcroft*, 389 F.3d 938 (9th Cir. 2004).

Persecution/ Cumulative Effect. Fijian of East Indian descent who was attacked, robbed, stabbed on two occasions, and "bashed" by ethnic Fijians, was refused help by the police or treatment at the hospital; such physical harm, suffered on more than one occasion, compels a finding that the acts against him cumulatively amounted to persecution. *See* *Chand v. INS*, 222 F.3d 1066 (9th Cir. 2000).

***Faruk v. Ashcroft*, 378 F.3d 940 (9th Cir. 2004) (A72-169-696)**; remanding for the IJ to consider harm inflicted by applicants' relatives, whom the government was unwilling or unable to control; B.FLETCHER.

Unable or Unwilling to Control/ Family as Source. "There is no exception to the asylum statute for violence from family members; if the government is unable or unwilling to control persecution, it matters not who inflicts it. *See* *Rodas-Mendoza v. INS*, 246 F.3d 1237, 1239–40 (9th Cir. 2001)." (at 943).

Persecution/ Cumulative Effect. The cumulative effect of the threats and attacks on interracial couple— including being abducted, beaten, physically attacked, verbally assaulted, assailed with rocks, losing his job, denied a marriage certificate, and seriously and repeatedly threatened—is sufficient to establish past persecution.

***Lal v. INS*, 268 F.3d 1148 (9th Cir. 2001) (*amending* 255 F.3d 998 (9th Cir. 2001) *on reh'g*) (A72-399-030)**; remanding based on finding that mistreatment suffered by asylum applicant and his family rose to the level of severity required by *Matter of Chen*; and changed country conditions information in the record was insufficient to rebut the presumption of fear of future persecution that arose once asylum applicant, an Indo-Fijian, had demonstrated past persecution; B.FLETCHER; (O'SCANNLAIN, dissenting, urges deference to the BIA's permissible construction of its own asylum regulation and that the BIA's denial of asylum was supported by substantial evidence).

Persecution/ Detention; Sexual Assault; Physical Harm. Based on the severity of the persecution alien's family faced in Fiji, asylum application was properly considered under the *Matter of Chen* rule, which waived the requirement that an individual who has suffered past persecution must also demonstrate a well-founded fear of future persecution; family members endured repeated arbitrary detentions, painful and humiliating torture, sexual assault, threats, and severe intimidation on the basis of their political opinion and religious beliefs, and suffered the horror of attempting to escape but finding their way barred by government blacklists.

Past Persecution/ Changed Conditions Not Found; Failure to Rebut. Changed country conditions information in the record was insufficient to rebut the presumption of fear of future persecution that arose once asylum applicant, an Indo-Fijian, had demonstrated past persecution; although abuses of Indo- Fijians in Fiji may not have been widespread or may not have formed a clear pattern, evidence indicated that applicant and his family were among the unlucky few who were most vulnerable to abuse.

Past Persecution/ Individualized Analysis. "In such a situation, the BIA must ask whether the INS has shown through record evidence that the individual who suffered past persecution is among the general population that is not suffering from a 'sustained pattern' of human rights violations, or whether the applicant is among the unlucky few who are most vulnerable to abuse. Such an assessment must take account of the specific attributes of the past persecution on record. *See Chand*, 222 F.3d at 1079. In this case, there is abundant evidence that Mr. Lal was well-known as a leader and organizer for the Labor Party because of his prominent organizing work during the 1987 elections. In addition, we know from the record that Mr. Lal is not among those Indo-Fijians who were attacked at random in the aftermath of the coup. Instead, he was specifically sought at his home by government representatives, taken into detention, and tortured. Members of his family were attacked and harassed. Nor did the abuse cease during Fiji's peaceful periods. Instead, Mr. Lal was sought and detained several times, even though he was no longer working as an organizer. His renown was such that his name was placed on a government blacklist. Perhaps most importantly, these events spanned a four year period. Like the applicant in *Chand*, then, Mr. Lal 'has shown that he has continued to face significant problems in the years after the coup, even after the general conditions improved substantially.' *Id*." (at 1011).

***Gafoor v. INS*, 231 F.3d 645 (9th Cir. 2000) (A71-781-355)**; (1) persecution by ethnic Fijian soldiers was motivated, at least in part, by protected grounds of race and imputed political opinion; (2) case would be remanded for reconsideration of changed country conditions in light of events that occurred in Fiji in 2000; and (3) Court of Appeals would take judicial notice of such events; remanded with instructions; HAWKINS; (O'SCANNLAIN, dissenting, discussed Congressional intent regarding the required showing of causation in asylum cases, also arguing that there should be no "recent events" exception to the review of facts on the record).

Persecution/ Detention; Physical Harm. Actions by ethnic Fijian soldiers of assaulting Indo-Fijian policeman in front of his family, holding him captive for a week, and beating him on street until he was bleeding and unconscious were motivated, at least in part, by protected grounds of race and imputed political opinion, as required for asylum, notwithstanding that soldiers were activated by fact that policeman had arrested high-ranking army officer for rape, where soldiers told policeman as they were beating him that Fiji was their country and that he "should go back to India."

Nexus/ Motive, Evidence Standard; Motive Found. "The evidence in this case is strikingly similar to the evidence we relied on in *Surita* and *Prasad*. In particular, the soldiers' statement that Gafoor should 'go back to India' is nearly identical to the soldiers' statement in *Surita* that she and her family should 'go back home to India.' Although the soldiers in *Surita* went one step further and said they were looting the house because her family was Indo-Fijian, that fact is

insufficient to distinguish the two cases. The soldiers made clear to Gafoor that his race and imputed political opinion contributed to their hatred of him and provided them with additional motive for their actions. That they did not tell him specifically that they were motivated by these factors is unimportant. As noted above, an applicant need not present direct evidence of a persecutor's motives if there is circumstantial evidence. *See* *INS v. Elias-Zacarias*, 502 U.S. at 483, 112 S.Ct. 812; *Chand v. INS*, 222 F.3d 1066, 1078 (9th Cir.2000). And the soldiers' statements to Gafoor are unmistakable circumstantial evidence that they were motivated by his race and imputed political opinion. *See* *Yazitchian v. INS*, 207 F.3d 1164, 1167-68 (9th Cir.2000) (evidence that government agents accused petitioner of providing weapons to opposition party, called him a 'Dashnak, ' and told him to leave Armenia compelled conclusion that he was persecuted on account of an imputed political opinion)." (at 651–52).

***Tagaga v. INS*, 228 F.3d 1030 (9th Cir. 2000) (A71-789-570)**; reversing and remanding based on finding that ethnic Fijian who had supported political party dominated by ethnic Indians had established eligibility for withholding by offering evidence that, *inter alia*, military officials had stated he would face trial for treason were he to return to Fiji; REINHARDT.

Well-Founded Fear/ Objectively Reasonable, Found; Protected Grounds/ Ethnicity. Fijian asylum applicant established well-founded fear of future persecution required for asylum eligibility, as well as higher burden required for withholding of deportation, by offering evidence that he had supported political party dominated by ethnic Indians even though he was ethnic Fijian, that while serving as military officer he had served six-month sentence for refusing to arrest Indo-Fijians, and that military officials had stated specifically that he would face trial for treason and that his life and freedom would be placed in danger were he to return to Fiji.

***Chand v. INS*, 222 F.3d 1066 (9th Cir. 2000) (A72-135-003)**; remanding based on findings that (1) harm suffered by Hindu Indian, who had been physically attacked by soldiers from Fijian military on three occasions, had been told after being robbed repeatedly that police were not interested in dealing with problem, and was forced to flee after his house and furniture were taken from him, rose to level of persecution; (2) persecution was based on his status as member of minority population of Indian Fijians; (3) no change of circumstances in Fiji sufficient to rebut presumption of future persecution was shown; and (4) alien established that it was more likely than not that he would be subject to persecution if he returned to Fiji; REINHARDT; *distinguished by* *Shoafera v. INS*, 228 F.3d 1070 (9th Cir. 2000); *Gafoor v. INS*, 231 F.3d 645 (9th Cir. 2000); *Nagoulko v. INS*, 333 F.3d 1012 (9th Cir. 2003).

Persecution/ Physical Harm; Robbery. Harm suffered by asylum applicant who had been victim of violence in his native Fiji on three occasions when he was physically attacked by soldiers from Fijian military, had been robbed repeatedly and testified that police were not interested in dealing with problem, and who was forced to flee after his house and furniture

were taken from him and his wife, rose to level of "persecution" which could potentially establish his eligibility for asylum based on past persecution.

Persecution/ Cumulative Effect. Where an asylum applicant suffered physical harm as result of government- sponsored attacks on more than one occasion, and was victimized at different times over a period of years, the harm is severe enough that no reasonable fact-finder could conclude that it did not rise to the level of past persecution making applicant potentially eligible for asylum, particularly when incidents are considered along with other acts to which applicant was subjected.

Nexus/ Motive Found. At least one of attacks, and displacement from his home, were on account of applicant's race and religion, second attack occurred after applicant's father challenged discriminatory enforcement of laws, and Fijian authorities were sometimes unwilling or unable to control crimes committed by ethnic Fijians.

Past Persecution/ Changed Conditions Not Found; Failure to Rebut. No showing was made that conditions in Fiji had changed sufficiently to rebut presumption of future persecution which arose after asylum applicant established that he had been subject to past persecution on basis of a protected ground in his native Fiji, and thus, applicant was eligible for asylum based on past persecution; while evidence indicated that, in general, conditions had improved after 1987 coups, they did not improve enough to protect applicant, who was a Hindu Indian, from several attacks by Fijian soldiers and ethnic Fijians, or from his eviction from his land and the seizure of his home, and racially motivated crime of type applicant faced remains a problem for some Indians in Fiji.

"It is not surprising that while racial or religious conditions may have improved generally, a number of individuals may continue to be subjected to acts of persecution on a regular basis. It may be true that in some regions of the country conditions are better than in others, or even that there are some villages in which persecution reigns and others in which it is entirely absent. Conditions may also differ depending on the social class or the political views of particular Indians. The State Department's Profile itself states that Indians are 'sometimes' subject to harassment and that police are 'sometimes' unable or unwilling to control it." (at 1079).

> *Prasad v. INS*, **101 F.3d 614 (9th Cir. 1996) (*amending and superseding* 83 F.3d 315 *on denial of reh'g*) (A70-136-468)**; reversing and remanding based on findings that (1) Ethnic Indian petitioner was victim of past persecution on account of his political activity, and (2) he was entitled to benefit of presumption that he had a well-founded fear of future persecution that was unrebutted; THOMPSON; *distinguished by Singh v. INS*, 134 F.3d 962 (9th Cir. 1998).

Persecution/ Detention; Physical Harm; Economic. Ethnic Indian established past persecution on account of his political activity, where he was jailed twice, beaten and subjected to sadistic and degrading treatment while in detention, beaten by agents of government on another occasion, and dismissed from his job because of his activities on behalf of ethnic Indians, all of which occurred in climate of official prejudice against ethnic Indians.

Surita v. INS, **95 F.3d 814 (9th Cir. 1996) (A28-806-577)**; remanding based on finding that ethnic Indian suffered past persecution by ethnic Fijians sufficient to trigger the presumption of a well-founded fear of future persecution; PREGERSON; *distinguished by* *Singh v. INS*, 134 F.3d 962 (9th Cir. 1998).

Persecution/ Robbery; Economic; Protected Grounds/ Ethnicity. Ethnic Indian suffered past persecution because of her race, triggering regulatory presumptions of eligibility; she was robbed 10-15 times on her way to and from work by ethnic Fijians because she was Indo-Fijian, she reported robberies to police, who said they could not do anything, she was compelled to quit her job of more than ten years and was afraid to leave her home, and ethnic Fijian soldiers looted her family's home because her family was of Indian descent, with the looting soldiers telling her family members that they should "go back home" to India.

Singh v. INS, **94 F.3d 1353 (9th Cir. 1996) (A70-147-755)**; remanding based on findings that (1) applicant and his family were entitled to asylum based on past persecution; (2) lack of evidence that persecution was committed by organized or quasi-governmental group did not preclude asylum; and (3) threats to life and freedom of asylum applicant and his family triggered regulatory presumption that they are entitled to withholding of deportation; PREGERSON.

Persecution/ Threats; Economic. Ethnic Indian was told that if he did not quit his job as the only Indo-Fijian general manager of a shipping company, he would be killed and his wife and daughter "finished off, " and shortly thereafter, loaded cargo pallets were dropped nearly on top of him as he walked on the wharf, ethnic Fijians threatened him at knife point and threatened his wife and daughter with burning their house, and threats continued after he quit and moved to a nearby town.

Unable or Unwilling to Control/ No Police Response. Lack of evidence that persecution was committed by organized or quasi-governmental group did not prevent applicant from establishing that he and his family were eligible for asylum; he reported each assault and threat to police, and, although he identified his assailants by name, police failed to respond to any of his crime reports, clearly indicating that police either could not or would not control ethnic Fijians who threatened applicant and his family.

France

Siong v. INS, 376 F.3d 1030 (9th Cir. 2004)
Vang v. INS, 146 F.3d 1114 (9th Cir. 1998)
Yang v. INS, 79 F.3d 932 (9th Cir. 1996)

***Vang v. INS*, 146 F.3d 1114 (9th Cir. 1998) (A71-950-994).** *See* **Laos** (Laotian petitioner who feared persecution in Laos and not France had firmly resettled in France with his parents).

***Yang v. INS*, 79 F.3d 932 (9th Cir. 1996) (cert denied, 519 U.S. 824 (1996))**; regulation categorically precluding asylum for refugees who have firmly resettled in another country was not *ultra vires*; petition denied; HALL; *distinguished by* *Vang v. INS*, 146 F.3d 1114 (9th Cir. 1998); *superceded by statute, accord* *Kankamalage v. INS*, 335 F.3d 858 (9th Cir. 2003).

Bars to Asylum/ Firm Resettlement, Found. Laotian family who fled Laos in 1975 to Thailand and then to France as refugees for 14 years were firmly resettled in France, even though it was unclear whether they had ever applied or became eligible for permanent residence in France. 8 C.F.R. § 298.14(c)(2).

***Siong v. INS*, 376 F.3d 1030 (9th Cir. 2004) (A71-947-830)**; finding prejudice from ineffective assistance of counsel and remanding to the board to grant motion to reopen; TASHIMA.

Persecution/ Threats. Death threats and attacks in France on four friends of petitioner who, like him, served CIA in Laos qualifies as persecution based on his activity fighting the Laotian communists. (at 1039).
Bars to Asylum/ Firm Resettlement, Not Found. Although Laotian petitioner's residence in France was not "substantially and consciously restricted by the authority of the country of refuge, " (8 C.F.R. § 208.15(b)) —he was in fact a citizen of France— nevertheless, the persecution he feared was from Laotian government agents conducting political violence against Hmong refugees living in France, and petitioner had thus not found a haven from persecution and could not be found to have firmly resettled in France. *See* *Yang v. INS*, 79 F.3d 932, 939 (9th Cir. 1996); *Ali v. Reno*, 237 F.3d 591, 595 (6th Cir. 2001). (at 1040).

Georgia

Melkonian v. Ashcroft, 320 F.3d 1061 (9th Cir. 2003)

> ***Melkonian v. Ashcroft*, 320 F.3d 1061 (9th Cir. 2003) (A73-133-099)**; finding asylum eligibility based on documentary evidence of ethnic cleansing; Affirmed in part, reversed in part, and remanded; Alien's subjective fear of future persecution if he was returned to section of former Soviet Georgia from which he fled when Muslim separatists gained control of area was objectively reasonable, and made him eligible for grant of asylum, based on uncontradicted evidence in record that separatists were currently in control of area and had engaged in systematic campaign of ethnic cleansing to eliminate all non-Abkhaz, such as alien, and on evidence that separatists had specifically targeted alien before his departure—involving threats, harassment, stolen property, and a pattern of general violence—even without a claim of physical violence to the alien. The court was heavily influenced by documentary evidence. Furthermore, the IJ should not have denied asylum based solely upon finding alien could avoid persecution by relocating internally to another area of Georgia where he would be safe, without considering whether relocation was reasonable. W.FLETCHER.

Past Persecution/ Internal Relocation Not Possible. Once past persecution has been established, the burden of proof to defeat a claim based on internal relocation is upon the government because of the presumption that the threat exists nationwide. *See also* *Singh v. Ilchert*, 69 F.3d 375 (9th Cir. 1995). Fact that Muslim-controlled area of former Soviet Georgia from which alien fled became part of Georgia only in 1931, and had now reasserted its autonomy, so that any relocation by alien to other areas of Georgia would in fact be more akin to an international rather than to an internal relocation, was factor that IJ had to consider in deciding whether alien, who had otherwise established well-found fear of future persecution,

could nevertheless be denied asylum on ground that he could reasonably be expected to relocate internally.

Bars to Asylum/ Firm Resettlement, Not Found. Refugee need not seek asylum in first place where he arrives, and mere fact that Armenian refugee from former Soviet Georgia, prior to arriving in the United States, had stayed for several weeks in Russia did not render him ineligible for asylum.

Germany

Nahrvani v. Gonzales, 399 F.3d 1148 (9th Cir. 2005)
Mashiri v. Ashcroft, 383 F.3d 1112 (9th Cir. 2004)

***Nahrvani v. Gonzales*, 399 F.3d 1148 (9th Cir. 2005) (A75-654-655)**; upholding IJ's denial of asylum based on finding that alien had firmly resettled in Germany; Alien experienced clear persecution in Iran which prompted his flight therefrom and a grant of asylum in Germany; he asserted that after he formally went to the Iranian embassy to renounce his citizenship he became a target of the Iranian government's persecution all over again. Alien provided an expert's opinion as to the objective component of the claim having been met; notwithstanding "death threats" being made against him, the majority found such threats "were anonymous, vague, and did not create a sense of immediate physical violence, " (at 1153), and "too vague to constitute persecution." (at 1157); RAWLINSON; (B.FLETCHER, dissenting, found that the Iranian government recommenced a campaign of persecution against alien and the German government was unwilling or unable to control).

Bars to Asylum/ Firm Resettlement, Found. Alien's deep and significant ties to Germany during his 10-year residence in the country, after he fled from Iran, amounted to firm resettlement; alien was granted permanent residency in Germany and renounced his Iranian

citizenship in an attempt to gain German citizenship, he married a German citizen, worked, and traveled freely throughout the country, and practiced Christianity openly.

Persecution/ Harassment; Threats; Property Damage. Although alien described several incidents in Germany of harassment, escalating threats—including those of death, —and property damage, he suffered only *de minimis* property damage and anonymous, ambiguous threats that did not create a sense of immediate physical violence, he suffered no physical harm, and he was never detained. This was so, notwithstanding an experts supportive report.

Unable or Unwilling to Control/ Police Response. German police took reports documenting alien's various complaints, alien admitted that he did not give police names of any suspects because he did not know any specific names, and alien's wife testified that police investigated complaints, but were ultimately unable to solve crimes.

***Mashiri v. Ashcroft*, 383 F.3d 1112 (9th Cir. 2004) (A74-822-406)**; remanding based on finding that German officials were unwilling or unable to control anti-foreigner violence against native Afghan living in Germany; B.FLETCHER.

Persecution/ Threats; Property Damage; Emotional. A note left on petitioners' car "invoked the terror of Germany's Nazi past and threatened death if the family did not leave Germany, " and was followed by violent ransacking of their apartment one month later, and then by sightings of anti-foreigner mobs in the area, all of which is "strong evidence of persecution." Past persecution can be established by infliction of emotional or psychological trauma, as well as physical acts. (at 1119–20).

Persecution/ Cumulative Effect. Petitioner's evidence of a death threat, violent physical attacks against her husband and sons, a near-confrontation with a violent mob, vandalism, economic harm and emotional trauma compels a finding of past persecution. (at 1121).

Unable or Unwilling to Control/ No Police Response. Police's limited investigation of anti-foreigner motivated attacks, combined with statements to petitioners that foreigners "better try to take care of [themselves], " demonstrated the government was unwilling to control anti-foreigner violence. (at 1121).

Unable or Unwilling to Control/ Nationwide Basis. An asylum applicant who has demonstrated past persecution is not required to prove that the government was unable or unwilling to control the violence on a countrywide basis, and need only show that the government was unable or unwilling to control the persecution in the applicant's home city or area. (at 1122).

Past Persecution/ Internal Relocation Not Possible; Individualized Analysis. State Department Report's general observations and descriptions of Germany as a functioning democracy do not rebut applicant's testimony of violence in other areas, the difficulty of relocating, or the existence of family ties in the United States. (at 1123).

Guatemala

Toj-Culpatan v. Holder, 588 F.3d 638 (9th Cir. 2009)
Barrios v. Holder, 567 F.3d 451 (9th Cir. 2009)
Martinez v. Holder, 557 F.3d 1059 (9th Cir. 2009)
Miguel-Miguel v. Gonzales, 500 F.3d 941 (9th Cir. 2007)
Hernandez-Ortiz v. Gonzales, 496 F.3d 1042 (9th Cir. 2007)
Recinos de Leon v. Gonzales, 400 F.3d 1185 (9th Cir. 2005)
Camposeco-Montejo v. Ashcroft, 384 F.3d 814 (9th Cir. 2004)
Garcia-Martinez v. Ashcroft, 371 F.3d 1066 (9th Cir. 2004)
Lopez v. Ashcroft, 366 F.3d 799 (9th Cir. 2004)
Gonzalez-Hernandez v. Ashcroft, 336 F.3d 995 (9th Cir. 2003)
Alvarez Santos v. INS, 332 F.3d 1245 (9th Cir. 2003)
Antonio-Martinez v. INS, 317 F.3d 1089 (9th Cir. 2003)
Ventura v. INS, 317 F.3d 1003 (9th Cir. 2003)
Cano-Merida v. INS, 311 F.3d 960 (9th Cir. 2002)
Ruano v. Ashcroft, 301 F.3d 1155 (9th Cir. 2002)
Rios v. Ashcroft, 287 F.3d 895 (9th Cir. 2002)
Molina-Estrada v. INS, 293 F.3d 1089 (9th Cir. 2002)
Pedro-Mateo v. INS, 224 F.3d 1147 (9th Cir. 2000)
Perez-Lastor v. INS, 208 F.3d 773 (9th Cir. 2000)
Chanchavac v. INS, 207 F.3d 584 (9th Cir. 2000)
Escobar-Grijalva v. INS, 206 F.3d 1331 (9th Cir. 2000)
Jacinto v. INS, 208 F.3d 725 (9th Cir. 2000)
Tecun-Florian v. INS, 207 F.3d 1107 (9th Cir. 2000)
Cordon-Garcia v. INS, 204 F.3d 985 (9th Cir. 2000)
Sebastian-Sebastian v. INS, 195 F.3d 504 (9th Cir. 1999)
Ortiz v. INS, 179 F.3d 1148 (9th Cir. 1999)
Duarte de Guinac v. INS, 179 F.3d 1156 (9th Cir. 1999)
Ordonez v. INS, 137 F.3d 1120 (9th Cir. 1998)

Toj-Culpatan v. Holder, **588 F.3d 638 (9th Cir. 2009)(A076-690-191)**; affirming the denial of relief because the I-589 had not been timely filed. The only issue decided in the holding involved the timing of the filing. Respondent came to the U.S. in February 1998. He was then detained and asserted a fear of returning to Guatemala. Respondent was told to submit the application at his hearing on April 16, 1998. At that time, respondent was represented by counsel. The offered I-589 was rejected because it had not been filled out in English. The hearing was continued until May. "Counsel specifically told petitioner that if petitioner sent counsel the application in Spanish, counsel would have it translated into English for him." Respondent was then released and venue over his case transferred. Petitioner finally filed his asylum application in English at his first hearing in the new venue of on September 7, 1999, approximately 17 months after the one year deadline fo February 1999. There was no claim of ineffective assistance of counsel. PER CURIAM.

Bars to Asylum/ One Year Bar, Found. Under 8 C.F.R. § 208.4(a)(5), the bar can be waived on demonstration of "extraordinary circumstances." Respondent argued that the following circumstances were extraordinary: (1) he does not speak English; (2) he was detained for two months in an immigration detention center; and (3) his case was transferred after he moved from Arizona to California. The circuit held that "none of these circumstances, either alone or in combination, constitute 'extraordinary circumstances' justifying the untimely filing."

Extraordinary Circumstances/ English Non-Fluency. The court was unimpressed with Respondent's non-fluency in English: "The inability to speak English constitutes an ordinary, not extraordinary, circumstance for immigrants."

Extraordinary Circumstances/ Delay in Docketing. The circuit did not find the delay in docketing to be a justifiable basis for Respondent's delay in filing: "He did not need to wait for a hearing to file his application."

Barrios v. Holder, **567 F.3d 451 (9th Cir. 2009)(A78 311 822)**; affirming a denial of relief. The respondent had also sought NACARA. His asylum claim was based on threats from gang members who "started to steal things from him . . . they cut his neck with a switchblade [and] told him it was a sign of what could happen to him" if he did not do their bidding. Since coming to the U.S. he had been advised that gang members had visited his residence "asking about and threatening him." Credibility was not at issue; WARDLAW.

Protected Grounds/ PSG/Gangs. The Court cited in particular to *Ramos-Lopez v. Holder*, 563 F.3d 855 (9th Cir. 2009), for the rejection of "young men in Guatemala who resist gang recruitment constitute a social group" as a particular social group. The Court also found that respondent was not justified in his political opinion claim where "being victimized [was due to] economic and personal problems, " citing *Santos-Lemus v. Mukasey*, 542 F.3d 738 (9th Cir. 2008).

Derivative Claims/ NACARA. The Court rejected respondent's NACARA claim by holding that "a minor who seeks relief as a derivative must personally satisfy the Act's requirement of seen years of continuous physical presence. Ramos's father's physical presence in the U.S. cannot be imputed to him to satisfy this requirement."

***Martinez v. Holder*, 557 F.3d 1059 (9th Cir. 2009)(A 70 217 803)**; affirming a denial of relief on credibility grounds. The respondent first put forth a claim based on asserted political activism. Relief was denied for lack of credibility. The Ninth Circuit found the basis of the administrative reasoning to be insufficient and remanded the case in an unpublished decision. The claim dramatically changed to the respondent being gay and consequently having had adverse experiences. The court extensively quotes from and relied on the Asylum Adjudicator's assessment to refer which had found the respondent to be credible on the first and then withdrawn claim of having been a political activist. TROTT; Dissent by PREGERSON.

Credibility/ Oath. "The major check on the asylum seeker's incentive to lie is an oath to thell the truth, and the asylum seeker's belief that he or she will be held to that oath. It is fair to say that the asylum process is ultimately an honor system - it depends largely on the assumption that asylum seekers will take the oath seriously, and that they will be truthful in their testimony.

Credibility/ Inconsistencies, Attempt to Enhance Claim. The dissent emphasized that at the time of the application, "the INS had not yet recognized that persecution on account of sexual orientation provided a valid basis for an asylum claim" and that he amended his claim shortly thereafter.

***Gonzalez-Hernandez v. Ashcroft*, 336 F.3d 995 (9th Cir. 2003) (A75-507-115)**; upholding BIA's finding that INS rebutted presumption of well-founded fear; Use of a Department of State Country Report was upheld in denial of relief to demonstrate that because of changed conditions, applicant no longer had an objectively reasonable fear. "The fact that Gonzalez relocated to Guatemala city without receiving any threats is highly relevant, " even though he reported that individuals continued to look for him in his home village. This deference to the Department of State report was upheld, even though the report was characterized as "contradictory or ambiguous." (at 999); petition denied; TALLMAN.

Past Persecution/ Country Reports, Use Of Permitted. "[W]here the BIA rationally construes an ambiguous or somewhat contradictory country report and provides an "individualized analysis of how changed conditions will affect the specific petitioner's situation, " *Borja v. INS*, 175 F.3d 732, 738 (9th Cir. 1999) (en banc) (citation and internal quotation marks omitted), substantial evidence will support the agency determination." (at 1000).

Alvarez-Santos v. INS, **332 F.3d 1245 (9th Cir. 2003)**(A72-137-814); affirming BIA denial of asylum upon finding that alien failed to show he had a well-founded fear of persecution if returned to Guatemala; BERZON.

Credibility/Omissions. Standing alone, omissions from asylum applications are not a sufficient basis for discrediting later testimony, especially when the applications were prepared by someone else. (at 1254).

Credibility/ Implausibility. "Here, however, there were additional compelling reasons for discrediting [applicant]'s testimony concerning a dramatic, pivotal event that had been omitted from his asylum applications. It is simply not believable that an applicant for asylum would fail to remember, and thus to include in either of his two asylum applications *or* his principal testimony, a dramatic incident in which he was attacked, stabbed, and fled to the mountains—the very incident that precipitated his flight from Guatemala—only to be reminded of it at the conclusion of his testimony, after taking a break, and, assertedly, because of an itch in his shoulder." (at 1254).

Antonio-Martinez v. INS, **317 F.3d 1089 (9th Cir. 2003) (A23-699-683)**; dismissing petition to review denial of asylum under fugitive disentitlement doctrine, where alien had been missing for over two years; KOZINSKI.

Molina-Estrada v. INS, **293 F.3d 1089 (9th Cir. 2002) (*amending and superceding* 281 F.3d 906 (9th Cir. 2002)) (A75-098-668)**; dismissing in part and denying in part; (1) Court of Appeals lacked jurisdiction to review BIA determination that no extraordinary circumstances excused alien's untimely filing of his application for asylum, and to review BIA discretionary denial of alien's application for cancellation of removal; (2) alien was ineligible for cancellation of removal on ground that his removal would cause exceptional hardship to his mother; and (3) evidence supported findings that alien was ineligible for withholding of removal; GRABER.

Protected Grounds/ Imputed Political Opinion, Not Found. Evidence of military position of alien's father in Guatemala and that, in 1982, when alien was 13 years old, he was injured and his father and cousin were killed when guerillas bombed his family's house in Guatemala, was insufficient to prove that he was targeted for persecution on account of an imputed political opinion of his father's, as would support his application for withholding of removal, absent any evidence that his father held particular political beliefs.

Protected Grounds/ Particular Social Group, Found; Family. Assuming that alien's family was a "particular social group" within the meaning of statute setting forth persecution on account of membership in a particular social group as a ground for withholding of removal, evidence in removal proceeding supported finding that alien, a citizen of Guatemala, was not persecuted in Guatemala on account of his family membership; although evidence showed he was a victim of violence directed against his father when, in 1982, when alien was 13 years old, he was injured

and his father and cousin were killed when guerillas bombed his family's house in Guatemala, there was no compelling evidence that alien was an intended victim.

Past Persecution/ Changed Conditions Found; Country Reports, Use Of Permitted. Evidence in removal proceeding supported finding that alien, a citizen of Guatemala, failed to demonstrate a reasonable fear of future persecution as would support his application for withholding of removal; alien did not establish past persecution, so there was no presumption to overcome, State Department report on country conditions showed that Guatemala's civil conflict ended in 1996, that the guerillas whom alien contended posed a future threat were being successfully reintegrated into productive society, and that there was a marked improvement in the human rights situation, and alien failed to present credible, direct, and specific countervailing evidence in support of his fear of future persecution.

Nexus/ Motive Not Found. "Although Petitioner was injured in the bombing of his family's house, there is no compelling evidence that the attackers knew that his father had a son or that they knew Petitioner was in the house at the time of the attack. That is, although he was a victim of the violence directed against his father, there is no compelling evidence that he was an intended victim. Petitioner did testify that threatening telephone calls were made to his grandmother's and sister's houses after the attack, but he did not testify about the specific content of the calls or the nature of the threats. There is no evidence that the guerillas ever threatened him." (at 1095).

Pedro-Mateo v. INS, **224 F.3d 1147 (9th Cir. 2000) (A70-637-599)**; denying petition based on finding that alien's kidnapings, first by government soldiers and then by guerillas, in effort to force him to join their respective military operations, was not on account of protected characteristic, and thus did not warrant asylum eligibility; WALLACE; (PREGERSON, concurring, argued that the panel had overreached in suggesting that Mayan Indians of Guatemala did not comprise a social group, and that the ruling should not foreclose relief to another asylum applicant relying on the same theory but making a different evidentiary showing).

Nexus/ Motive Not Found. Kidnapings of Kanjobal Indian in Guatemala, first by government soldiers and then by guerillas, in effort to force him to join their respective military operations, was not on account of his race, membership in a particular group, or political opinion, and thus did not warrant asylum eligibility; documentary evidence indicated that civilians were forcibly recruited by both sides in areas of conflict, not that Kanjobal Indians were recruited because of any protected ground, and indigenous people comprising large percentage of population in disputed area did not constitute social group.

Persecution/ Forced Conscription. Absent evidence of discriminatory purpose, a guerilla organization's attempts to force a person to join them is insufficient to compel a finding of persecution on account of political belief warranting eligibility for asylum.

Tecun-Florian v. INS, **207 F.3d 1107 (9th Cir. 2000)**; denying petition upon finding alien did not have a fear of persecution on account of religious beliefs, political opinion, or

imputed political opinion; REAVLEY; (FERGUSON, dissenting, argued that the holding in *Elias-Zacarias* was not as broad as interpreted by the majority, arguing that it does not stand for the general proposition that persecution following a refusal to assist can never constitute a basis for seeking asylum).

Nexus/ Motive Not Found. BIA reasonably determined that alien who refused to join Guatemalan guerillas because of his religious beliefs and was tortured by them for ten days did not have fear of persecution on account of religious beliefs, political opinion, or imputed political opinion, and thus was not eligible for asylum; although guerillas watched him going to church, he never told them his refusal was based on religious beliefs, he and his sister testified that torture was result of his refusal to join, and neither alien nor sister testified that his brothers' government service motivated guerillas to torture him.
Nexus/ Retribution, Not On Account of Protected Ground. "Although the record demonstrates that Tecun-Florian refused to join the guerillas because the guerillas' actions violated his religious beliefs, the BIA could reasonably determine that the guerillas tortured Tecun-Florian solely in retribution for refusing to join their group--and not because of his religious or political beliefs. Tecun-Florian testified that the guerrillas told him that they were persecuting him because he refused to join them, and he himself believed that the guerillas acted out of retribution for his refusal to join. Tecun-Florian's sister also testified that she believed the guerillas kidnaped her brother because he refused to enlist with them. The only evidence suggesting that the guerillas were motivated by anything other than his refusal to join them was the fact that they watched him going into the church. Bound by the authority of *Elias-Zacarias*, we must hold that the evidence presented was not 'so compelling that no reasonable factfinder could fail to find the requisite fear of persecution.'" (at 1109).

***Sebastian-Sebastian v. INS*, 195 F.3d 504 (9th Cir. 1999) (A73-915-724)**; denying petition based on deference to BIA's implied adverse credibility finding; WIGGINS; (WIGGINS, concurring, and BRUNETTI, specially concurring: BIA made implied finding that alien's testimony was not credible when it found that alien's persecution by Guatemalan guerillas was not due to implied political opinion based on his brother's military service, and, thus, Court of Appeals was required to defer to such decision and deny asylum); (PREGERSON, dissenting, found that the alien had established a well-founded fear of future persecution on account of imputed political opinion, and that neither the INS, IJ, or BIA had questioned his credibility).

***Ortiz v. INS*, 179 F.3d 1148 (9th Cir. 1999) (A73-996-367)**; petition denied; (1) unexhausted administrative remedies precluded remand to BIA so they could apply for suspension of deportation under NACARA and CAT; (2) aliens were not prejudiced as result of any ineffective assistance of counsel and thus were not denied due process; (3) alien's admission supported factual finding that he had been convicted of drug trafficking; (4) BIA's dismissal of appeal of denial of asylum was action triggering application of definition of aggravated felony found in IIRIRA; and (5) alien's Guatemala conviction for drug trafficking was aggravated felony; BOOCHEVER.

Asylum Application/ Ability to Amend. Alien's original asylum application had been prepared by a notary; IJ granted his new counsel opportunity to amend, since counsel had indicated some of it was untrue. Alien testified that his life would be threatened if returned because police had come to his house and beaten him on several occasions.
Administrative Proceedings/ Exhausting Admin Remedy. Aliens appealing denial of asylum were not entitled to remand to Board of Immigration of Appeals so they could apply for relief under CAT, inasmuch as they had unexhausted administrative remedy in form of motion to BIA to reopen their deportation proceedings.
Ineffective Assistance/ Prejudice Not Found. Aliens were not prejudiced by, and thus were not denied due process as result of, any ineffective assistance of counsel provided them in deportation proceedings; although aliens sought remand so they could explain why they were eligible for asylum, they failed to explain what evidence they would present on remand to support their claim.

Miguel-Miguel v. Gonzales, **500 F.3d 941 (9th Cir. 2007)**; reversing and remanding a denial of asylum and withholding of removal. FISHER.

Bars to Asylum/ Particularly Serious Crime, Factors to Consider. Respondent had been convicted of the sale of a small amount of cocaine. The respondent had been found to have established a basis for withholding of removal. Applying *Matter of Y-L*, 23 I&N Dec. 270 (AG 2002), the respondent was found to have been convicted of a PSC and hence was denied relief. The court held that it was permissible for the AG to set forth the "strong presumption that a drug trafficking offense resulting in a sentence of less than 5 years is a PSC." (at 943). However, the standard could not be applied to convictions prior to the AG's decision.

Hernandez-Ortiz v. Gonzales, **496 F.3d 1042 (9th Cir. 2007) (A76-346-033)**; reversing and remanding a denial of asylum to two indigenous Guatemalan brothers; NOONAN.

Past Persecution/ Claims by Children; Persecution/ Of Family. At the time in question, 1982, the two brothers were ages 9 and 7. They made no claim that they themselves had been the victims of any violence. They claimed that Guatemalan soldiers "beat the boys' father in front of their mother and took him away." (at 1044). In addition, their older brother was killed by government forces. The brothers feared that if they returned to Guatemala they would be viewed as guerrilla sympathizers and killed by the army. (at 1044). The court held that "injuries to a family must be considered in an asylum case where the events that form the basis of the past persecution claim were perceived when the petitioner was a child, " and the IJ must view the events "from the perspective of a small child." (at 1045).
Credibility/ Misrepresentations. The court rejected the adverse credibility finding because the misstatements were not material to the claim. (at 1045).

Recinos de Leon v. Gonzales, **400 F.3d 1185 (9th Cir. 2005) (A72-527-227)**; remanding based on inability to discern the grounds for the agency's action; the BIA summarily affirmed an indecipherable decision of the IJ; BERZON.

Well-Founded Fear/ Ten Percent Rule. "A reasonable possibility [that the applicant will be persecuted upon return to the country in question] may be shown even where the applicant has only a ten percent chance of being persecuted." (at 1190).
Past Persecution/ Humanitarian Asylum, Standard. "The 'severity of the past persecution, ' 8 C.F.R. § 1208.13(b)(1)(iii)(A), is relevant only to whether an applicant is to be granted asylum in the exercise of an asylum officer's discretion without showing a well-founded fear of future persecution. The degree of severity of past persecution is irrelevant to finding whether any past persecution *occurred*." (at 1191–92, internal citations omitted).

Camposeco-Montejo v. Ashcroft, **384 F.3d 814 (9th Cir. 2004) (A77-541-085)**; remanding based on finding that (1) IJ's conclusion that alien received offer of permanent resettlement in Mexico, as would establish that alien was firmly resettled in Mexico, barring asylum, was not supported by substantial evidence, and (2) IJ's finding that alien had 16 years of peaceful residence in Mexico was not supported by substantial evidence; TASHIMA. *Accord* *Maharaj v. Gonzales*, 453 F.3d 961 (9th Cir. 2006) (en banc).

Bars to Asylum/ Firm Resettlement, Not Found. Jacalteco Mayan Indian from Guatemala who had been issued an FM3 refugee document in Mexico had the right to renew his FM3 if deported to Mexico, and legally lived there for 16 years before coming illegally to the U.S., but continues to have no right to apply for permanent residency in Mexico and, accordingly, has not received an offer of permanent resettlement. (at 820). Applicant's 16-year stay in Mexico may give rise to a presumption of resettlement only if it was not disrupted by threats of repatriation, travel restrictions, and other molestation or persecution and hence was not accepted. (at 820).

Garcia-Martinez v. Ashcroft, **371 F.3d 1066 (9th Cir. 2004) (A76-847-476)**; remanding based on finding past persecution on account of political opinion; Regardless of whether Guatemalan soldiers who raped petitioner knew of her brother's forced conscription by insurgent guerillas ten years earlier, evidence that soldiers, as a result of widespread conscription of young men in village by these insurgents, had mistakenly inferred that village was attempting to aid guerillas and had retaliated on village-wide basis by systematically targeting villagers as whole was sufficient to compel conclusion that alien's gang rape by soldiers was motivated, at least in part, by imputed political opinion; RAWLINSON.

Persecution/ Of Family; Rape; Past Persecution/ Evaluation of Context. Testimony of prolific military violence in applicant's village demonstrated that her own attack was not an isolated incident. Although her brother's kidnaping and forced conscription by guerilla forces occurred ten years prior to soldiers attacking and raping her, the events must be evaluated in the context of continuing brutality suffered by other villagers during that same decade. (at 1075).
Nexus/ Mixed Motive. Soldiers' statements to rape victim that they wanted "to be with a woman" and satisfy their "unlawful, violent, carnal desire, " and not "that they were raping her on account of a protected ground is *not* highly relevant." The soldiers attacked applicant because she belonged to a village they considered a guerilla stronghold, as demonstrated by their systematic targeting of everyone in the village. (at 1076).
Past Persecution/ Changed Conditions Not Found. "[R]ecent reports reflect that 'seven years after the signing of peace accords, Guatemala has made little progress toward securing the protection of human rights and rule of law that are essential features of a functioning democracy.'" (at 1077).

Lopez v. Ashcroft, **366 F.3d 799 (9th Cir. 2004) (A70-187-523)**; remanding based on finding that (1) harm suffered by asylum applicant rose to the level of persecution; (2) persecution was on account of politically-based refusal to cooperate with guerillas; (3) BIA's conclusory determination regarding changed country conditions was not sufficiently individualized; GOULD; *distinguished by Khup v. Ashcroft*, 376 F.3d 898 (9th Cir. 2004).

Persecution/ Physical Harm; Threats; Medical Attention. "The credible testimony made plain that [applicant] had been placed in a burning warehouse by guerillas, bound so he could not escape absent help, and had suffered additional threats on his life from the same group. That [applicant] did not seek medical treatment for the burns he suffered is hardly the touchstone of whether his treatment by guerillas amounted to persecution." (at 803).
Nexus/ Motive Found; Persecution/ Forced Conscription. While forced recruitment alone does not constitute a basis for asylum, applicant's punishment by guerillas for his pro-establishment political opinions was persecution on account of political opinion. (at 804).
Past Persecution/ Individualized Analysis. "If past persecution is shown, the BIA cannot discount it merely on a say-so. Rather, our precedent establishes that in such a case the BIA must provide an individualized analysis of how changed conditions will affect the specific petitioner's situation." (at 805 (citation and internal quotation marks omitted)).

Ventura v. INS, **317 F.3d 1003 (9th Cir. 2003) (*reh'g of* 264 F.3d 1150 (9th Cir. 2001) *on remand from the U.S. Supreme Court*, 537 U.S. 12 (2002)) (A72-688-860)**; remanding and instructing that in the event BIA reopened record on remand to consider issue of whether changed circumstances in alien's home country rebutted presumption that he had a well-founded fear of persecution on account of political opinion imputed to him, it was required to also consider allowing alien to present new evidence of family persecution which he sought to present by his motion to reopen, together with any other current evidence of such family circumstances. The decision in 2001 held that (1) alien had been

subjected to past persecution by guerrillas in his native Guatemala; (2) persecution was on account of an imputed political opinion, so that presumption arose that alien had a well-founded fear of future prosecution; and (3) INS failed to present evidence of changed country conditions sufficient to rebut presumption of future persecution. SCHROEDER, LAY (8th Cir.) and THOMPSON.

Persecution/ Of Family. Alien was subjected to past persecution in his native Guatemala, as would potentially make him eligible for grant of asylum and withholding of deportation, where just prior to his departure from country guerrillas had spray-painted three "notes" on wall of his house, demanding that he join their forces and threatening harm to alien and his family if he did not, and relatives of alien, some of whom were in Guatemalan military, had been subjected to physical attacks by, and threats from, guerrillas. (2001 decision).

Persecution/ Forced Conscription. Forced recruitment of alien without evidence of a discriminatory purpose is insufficient to compel a finding of past persecution on account of political opinion, as will make alien eligible for grant of asylum and withholding of deportation. (2001 decision).

Protected Grounds/ Imputed Political Opinion, Found. Past persecution of alien in his native Guatemala by guerrillas, who demanded that he join their forces and threatened harm to alien and his family if he did not, was on account of an imputed political opinion, so that presumption existed that alien had a well-founded fear of future prosecution which would potentially warrant grant of asylum and withholding of deportation; alien gave credible, uncontradicted testimony that guerrillas targeted him because they believed he held anti-guerrilla sympathies, that his uncle was attacked and one of his cousins was killed by guerrillas because of their military affiliations, and that he was closely associated with another of his cousins, who was an army lieutenant. (2001 decision).

Past Persecution/ Failure to Rebut. INS failed to present evidence of changed country conditions sufficient to rebut presumption that alien had a well-founded fear of future persecution in his native Guatemala, which arose from evidence indicating that alien had been subjected to persecution based on imputed political opinion, and thus, alien was eligible for grant of asylum, and entitled to withholding of deportation; while peace agreement had been entered and cease-fire declared in Guatemala, guerrillas continued to employ death threats, and State Department report indicated that situation was unlikely to improve significantly in the short term. (2001 decision).

***Cano-Merida v. INS*, 311 F.3d 960 (9th Cir. 2002) (A72-509-945)**; remanding based on findings that (1) IJ denied alien due process by failing to provide him with full and fair hearing and reasonable opportunity to present evidence; (2) alien was prejudiced by such denial of due process; and (3) BIA did not abuse its discretion in refusing to reopen for consideration under Convention; TROTT.

Due Process/ Full and Fair Hearing. IJ denied alien due process by failing to provide him with full and fair hearing and reasonable opportunity to present evidence, where IJ went off record to tell alien before he had opportunity to present oral testimony or documents in support of his asylum application that he had no basis for asylum claim, IJ then presented alien with Hobson's choice of proceeding with claim labeled as baseless or dropping claim and receiving six months

to make departure arrangements, and IJ apparently did not discuss with alien his option to appeal.

Motion to Reopen/ Failure to Show Claim. BIA did not abuse its discretion in refusing to reopen deportation case for consideration under Convention Against Torture, inasmuch as alien's evidence did not demonstrate it was more likely than not he would be tortured with consent or acquiescence of public official if returned to Guatemala.

***Ruano v. Ashcroft*, 301 F.3d 1155 (9th Cir. 2002) (A72-140-951)**; granting withholding and remanding for asylum determination; (1) alien showed that he was unwilling or unable to return to his home country because of well founded fear of persecution on account of his membership in particular social group or political opinion, and (2) alien was entitled to withholding of deportation; D.W.NELSON; *called into doubt by* Gonzalez-Hernandez v. Ashcroft, 336 F.3d 995 (9th Cir. 2003); *distinguished by* Nahrvani v. Gonzales, 399 F.3d 1148 (9th Cir. 2005).

Withholding of Deportation/ Granted. Alien, an officer of the Guatemala City chapter of the UCN political party, received death threats in the mail from a guerrilla organization and was tracked by four armed men on several occasions. IJ determined that his past treatment did not rise to the level of persecution, and that State Department report indicated that only high-level activists were targeted and only in their home communities. BIA affirmed, relying on Lim v. INS, 224 F.3d 929 (9th Cir. 2000) in determining that prior threats did not amount to persecution. The Court of Appeals distinguished *Lim* because here the alien was closely confronted by pursuers. The State Department report was insufficient to show changed country conditions or that alien could find safety elsewhere in Guatemala because it did not address his claim on an individualized basis.

***Rios v. Ashcroft*, 287 F.3d 895 (9th Cir. 2002) (A72-536-538)**; granting withholding and remanding for asylum determination; (1) aliens suffered past persecution; (2) past persecution was on account of imputed political opinion; (3) State Department report did not establish changed conditions sufficient to overcome presumption of well-founded fear of future persecution; PREGERSON; *called into doubt by* Gonzalez-Hernandez v. Ashcroft, 336 F.3d 995 (9th Cir. 2003).

Persecution/ Threats; Physical Harm; Kidnaping; Of Family. Applicants suffered past persecution within meaning of asylum statute where anonymous callers repeatedly threatened to kill family of the applicants (the applicants are the wife and son of a Guatemalan army colonel), guerrillas wounded wife-applicant so severely that she was hospitalized for one month with severed tendons in her hand, guerrillas kidnaped wife-applicant, guerrillas attempted to kidnap son-applicant, and guerrillas murdered colonel and wife-applicant's brother.

Nexus/ Motive Found. Past persecution of applicants was on account of imputed political opinion within meaning of asylum statute, where guerrillas told wife-applicant that they abducted and wounded her because her husband and brother were members of Guatemalan army, and confirmed that colonel was son's father before attempting to abduct son.

Past Persecution/ Changed Conditions Not Found; Country Reports, Use Of Rejected. State Department report prepared in 1998, indicating that peace accord had been signed by Guatemalan National Revolutionary Unity Guerrillas in 1996 and that many guerrilla forces were now disarmed, did not establish that conditions had changed in Guatemala since 1991 sufficiently to overcome presumption of well-founded fear of future persecution, for purposes of asylum application filed by wife-applicant and son-applicant of Guatemalan army colonel.
Well-Founded Fear/ Continued Family Presence. Fact that wife-applicant's sister and parents continued to live in Guatemala was insufficient to overcome presumption of well-founded fear of future persecution, for purposes of asylum application filed by wife and son of Guatemalan army colonel; sister and parents were not related to colonel and there was no evidence they had been assaulted or threatened.

> ***Perez-Lastor v. INS*, 208 F.3d 773 (9th Cir. 2000)**; remanding upon finding that incompetent translation prejudiced asylum applicant; PREGERSON; (O'SCANNLAIN, dissenting, notes that neither the applicant nor the record indicates how correct translations at the hearing could have refuted the BIA's adverse credibility determination).

Due Process/ Translation. Translation from Quiche language provided to Guatemalan asylum applicant was incompetent, for purposes of due process claim; applicant's answers frequently were not responsive to questions asked, applicant repeatedly expressed difficulty understanding translation, and applicant never understood some questions, despite repetition of questions.
Applicant was prejudiced by incompetent translation from Quiche language provided in deportation hearing, and thus was denied due process; alien's inability to understand questions of IJ prevented him from explaining why he did not provide Quiche or Spanish language version of declaration that IJ refused to admit on ground that it was not in language applicant could understand, IJ disbelieved applicant's testimony because he could not communicate effectively, and IJ exacerbated translation problems by aggressively cross-examining applicant.

> ***Chanchavac v. INS*, 207 F.3d 584 (9th Cir. 2000) (A72-528-930)**; reversing and remanding; (1) alien suffered past persecution by Guatemalan military and thus was entitled to legal presumption of well-founded fear of persecution; (2) alien's persecution was on account of imputed political opinion; (3) State Department Country Report did not establish changed country conditions sufficient to rebut presumption; and (4) alien was eligible for withholding of deportation; PREGERSON; (O'SCANNLAIN, dissenting, indicated that petitioner has not adduced evidence that is so compelling that no reasonable factfinder could fail to find persecution); *called into doubt by* *Gonzalez-Hernandez v. Ashcroft*, 336 F.3d 995 (9th Cir. 2003).

Credibility/ IJ Speculation. Inasmuch as record contained no materially inconsistent testimony, IJ's reasons for doubting credibility stemmed from IJ's personal conjecture about what was expected behavior of Guatemalan Indian, and were likely attributable to translation difficulties.

Persecution/ Physical Harm; Of Family; Generalized Violence. Asylum applicant, who was Quiche Mayan Indian, suffered past persecution by Guatemalan military, and thus was entitled to legal presumption of well-founded fear of persecution, where military broke into his home and beat him so severely that he was bedridden for two days, military beat his father, applicant testified about prolific military violence in his town, including killings of his brother and grandfather, and, although attempted recruitment by guerillas prompted applicant to flee Guatemala, he consistently testified he feared both military and guerillas.

Nexus/ Motive Found; Protected Grounds/ Imputed Political Opinion, Found. Asylum applicant's persecution by Guatemalan military was based on military's incorrect belief that applicant supported guerillas, and thus was on account of protected ground of imputed political opinion, where military accused applicant of being guerrilla and demanded information about his "guerrilla friends" while beating him, and there was no evidence that military wanted to punish him for not joining their ranks.

Past Persecution/ Failure to Rebut; Country Reports/ To Rebut Past Persecution, Insufficient. State Department Country Report for Guatemala issued in 1995 did not establish changed country conditions sufficient to rebut presumption that asylum applicant had well-founded fear of future persecution; report stated that human rights violations continued at alarming rate, and, although report stated that persons who failed to report for military service were not prosecuted, applicant did not fear military induction, but feared being beaten and killed by military on account of imputed sympathy for guerrillas.

Escobar-Grijalva v. INS, **206 F.3d 1331 (9th Cir. 2000) (*as amended by* 213 F.3d 1221 (9th Cir. 2000) (A72-519-396)**; remanding based on finding that applicant was denied statutory right to counsel when, inter alia, IJ allowed her to be represented by attorney whom she had never met and who had no understanding of her case; NOONAN; (O'SCANNLAIN, dissenting, notes that the majority failed to address the merits of the claim).

Counsel/ Right To. IJ denied asylum applicant her statutory right to counsel when he allowed her to be represented by attorney whom she had not previously met and who had no understanding of her case, after giving her choice of being represented by such attorney, representing herself, or obtaining continuance to obtain new counsel, in which case she would not be permitted to choose first attorney or any of six other attorneys listed by IJ; applicant's response did not clearly indicate that she chose first attorney, IJ did not give first attorney opportunity to talk to applicant, and IJ, in excluding attorneys, confused first attorney with attorneys from law office that had previously represented applicant.

Jacinto v. INS, **208 F.3d 725 (9th Cir. 2000)**; reversing and remanding based on a lack of a full and fair hearing; BRIGHT; (TROTT, dissenting, argues that petitioner acknowledged understanding of her rights, and her case was aided by, not hurt by, the IJ).

Due Process/ Full and Fair Hearing; Pro Se. Alien appearing without counsel while seeking asylum, withholding of deportation, and voluntary departure did not receive full and fair hearing, as required by due process clause; IJs failed to sufficiently explain that she could be

witness even if she obtained attorney, inadequately explained hearings' procedures, and failed to explain what she had to prove to establish asylum, and she was told she would be questioned by IJ and counsel for government but not that she could present her own affirmative testimony in narrative form.

Due Process/ IJ Failure to Advise. Matters related to alien's credibility might have been resolved differently if alien had received information about her right to present direct narrative testimony, and alien's responses to questioning of IJ indicated that she did not understand procedures in which she was engaged or implications of her answers.

> ***Cordon-Garcia v. INS*, 204 F.3d 985 (9th Cir. 2000) (A70-922-377)**; remanding based on findings that (1) alien established past persecution based on imputed political opinion; (2) alien had well-founded fear of future persecution, assuming her testimony was credible; and (3) remand for consideration of credibility was warranted; TROTT.

Nexus/ Motive Found. Alien's abduction and beating by guerrilla in Guatemala was on account of imputed political opinion, and she thus established past persecution for purposes of asylum claim, where abductor informed her that her teaching of adult literacy on behalf of government was undermining guerrillas' recruitment efforts, and told her that she would have to decide whether she was going to work with guerrillas or government.

Well-Founded Fear/ Objectively Reasonable, Found. Alien had well-founded fear of future persecution, assuming credibility of her testimony that her family told her that guerillas were looking for her because she had taught adult literacy for government, and that, after she left Guatemala, guerillas killed her father and uncle after inquiring about their relationship to her.

Evidence/ Hearsay. "The INS complains that all of this information is founded upon hearsay, and, at times, hearsay upon hearsay. This may be true. However, because this court does not require corroborative evidence, *Lopez-Reyes v. INS*, 79 F.3d 908, 912 (9th Cir. 1996), that Petitioner's testimony may be based upon hearsay is of no effect. This court recognizes the serious difficulty with which asylum applicants are faced in their attempts to prove persecution, *see Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1285 (9th Cir. 1985), and has adjusted the evidentiary requirements accordingly." (at 992–93).

> ***Duarte de Guinac v. INS*, 179 F.3d 1156 (9th Cir. 1999) (A74-322-717)**; remanding upon finding (1) past persecution, (2) country conditions evidence failed to rebut presumption that alien possessed well-founded fear of future persecution, and (3) alien was entitled to withholding of deportation; REINHARDT; *distinguished by Nagoulko v. INS*, 333 F.3d 1012 (9th Cir. 2003); *Padash v. INS*, 358 F.3d 1161 (9th Cir. 2004); *Mansour v. Ashcroft*, 390 F.3d 667 (9th Cir. 2004).

Persecution/ Harassment; Discrimination. Asylum applicant established past "persecution, " as opposed to mere "discrimination, " where alien testified credibly, and consistently with country conditions documentary evidence, that, following his conscription into Guatemalan army, he witnessed and was victim of repeated beatings and severe verbal harassment by his

Hispanic superiors accompanied with verbal insults referring to his status as Indian, and that he was threatened with death when he complained to his commanding officer.
Past Persecution/ Failure to Rebut. Country conditions evidence offered by INS did not rebut presumption that asylum applicant possessed well-founded fear of future persecution as result of having been beaten and threatened with death based on his Indian status while serving in Guatemalan army; State Department Profile described frequent claims of government-sponsored or condoned mistreatment of Indians.

***Ordonez v. INS*, 137 F.3d 1120 (9th Cir. 1998) (A73-910-164)**; remanding upon finding BIA abused its discretion by precluding consideration of other hardship factors; T.G.NELSON; subsequent appeal based on insufficient voluntary departure notice at 345 F.3d 777 (9th Cir. 2003).

Suspension of Deportation/ Persecution as Evidence of Hardship. BIA abused its discretion when, in addressing alien's allegations of persecution in context of extreme hardship analysis of application for suspension of deportation, it limited its inquiry to whether alien had shown persecution on account of political conditions in Guatemala, thus precluding itself from considering other relevant hardship factors, including alien's claim that, as person who had resigned from police force, he would be met with certain death if forced to return. That alien's extreme hardship claim cannot be forced within one of the factors listed in *Matter of Anderson* is not automatic bar to suspension of deportation application. Requirement of *Astrero*, that BIA consider all relevant factors in deciding application for suspension of deportation, does not contemplate any existing list of categories, but rather that BIA fully and completely consider all facts which bear on extremity of hardship which deportation may inflict.

Haiti

Brezilien v. Holder, 565 F.3d 1163 (9th Cir. 2009)
Doissaint v. Mukasey, 538 F.3d 1167 (9th Cir. 2008)
Desir v. Ilchert, 840 F.2d 723 (9th Cir. 1988)

Brezilien v. Holder, **565 F.3d 1163 (9th Cir. 2009)(A71-894-056)**; reversing and remanding a denial of relief. On three occasions an IJ granted asylum or related relied and each time the Board reversed upon DHS appeal. The respondent claimed to be a strong supporter of former Haitian President Aristide. He further claimed that his father had been shot because of his activities and that he had been threatened. Credibility was not at issue. He fled Haiti at age 16. He was granted asylum by the then INS and became an LPR in 1994. He returned to Haiti three times thereafter. In 2000, he was convicted of attempted aggravated assault against the mother of his child. He was placed in proceedings and again requested asylum. The Board's reversal on asylum was based on three grounds: (1) the events which formed the basis of his claim had occurred 12 years earlier and were deemed too remote in time to any present claim; (2) he had not shown that the claimed death of other family members in Haiti were related to their claimed political activity; and (3) he had been able to return to Haiti three times without incident. The IJ also granted relied under CAT on the basis that "criminal deportees who are returned to Haiti are detained for an indeterminate amount of time and that conditions of detention in a Haitian prison could amount to torture." PAEZ.

Board of Immigration Appeals/ Jurisdiction. Because the Board engaged in "impermissible fact finding, " its reversal of the IJ's decision could not stand.

Doissaint v. Mukasey, **538 F.3d 1167 (9th Cir. 2008)(A72-385-953)**; reversing a denial of a motion to reopen to seek relief under CAT. The court found that the BIA had "ignored" an assignment of error in a direct case appeal. It further held that the Board could not "cure this legal error in its subsequent consideration of petitioner's motion to reopen." (at *2). GRABER.

Desir v. Ilchert, **840 F.2d 723 (9th Cir. 1988)**; reversing and remanding based on finding alien had presented evidence of successive and specific threats on his life, on basis of the imputed political opinion in context of systemic human rights abuses linked to extortion by government security agents, thereby establishing eligibility for asylum; TANG; *declined to extend by Prasad v. INS*, 47 F.3d 336 (9th Cir. 1995).

Persecution/ Extortion. Beatings, imprisonment, and assaults by government security forces for purposes of extortion may constitute persecution on account of political opinion.
Persecution/ Arrests; Physical Harm. Alien credibly testified he had been arrested three times, severely beaten on several occasions, and directly fired upon by an officer who recognized him; these abuses resulted because of alien's failure to make "contributions" to the Macoutes upon demand.
Country Reports/ To Support Claim, Sufficient. "The record also contains substantial evidence that the Haitian government under Duvalier operated as a 'kleptocracy, ' or government by thievery, from the highest to the lowest level. The Ton Ton Macoutes, an elaborate network of official and semi-official security forces, factions of which were fiercely loyal to the Duvalier family, formed the heart of the system. Because the Macoutes often went unpaid except for a few of their highest ranking officers, they depended on their fellow Haitians for their livelihood, a circumstance encouraging wide-scale corruption, extortion and violence. Refusal to comply with extortionate demands resulted in the attribution of anti-government sympathies and also in swift reprisals, including beatings, imprisonment and death." (at 727).

Honduras

Ramos-Lopez v. Holder, 563 F.3d 855 (9th Cir. 2009)
Castro-Perez v. Gonzales, 409 F.3d 1069 (9th Cir. 2005)
Lainez-Ortiz v. INS, 96 F.3d 393 (9th Cir. 1996)
Ramos-Vasquez v. INS, 57 F.3d 857 (9th Cir. 1995)

> ***Ramos-Lopez v. Holder*, 563 F.3d 855 (9th Cir. 2009);** affirming a denial of relief to an individual who claimed particular social group (PSG) status as "young Honduran men who have been recruited by the MS 13, but who refuse to join." Credibility was not an issue. Respondent testified that he had been threatened at gun point along with a friend "that they could either join the MS 13 or be killed." There had not been a claim of actual physical violence. TASHIMA.

Protected Grounds/ PSG/Gangs. The Court reviewed a number of decisions, including *Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *Arteaga v. Mukasey*, 511 F.3d 940 (9th Cir. 2007); *Santos-Lemus v. Mukasey*, 542 F.3d 738 (9th Cir. 2008), for the proposition that those threatened by the criminal gang and who made up the proposed group did not have the requisite "social visibility" or "particularity" to form a basis for protection.

Protected Grounds/ Political Opinion, Not Found. The court again relied on *Santos-Lemus* to find that "the refusal to join MS without more does not constitute a 'political opinion.'" The court further found no basis for imputed political opinion despite the petitioner's strong disagreement with the gang's activity.

***Castro-Perez v. Gonzales*, 409 F.3d 1069 (9th Cir. 2005) (A77-620-333)**; upholding BIA's summary affirmance of IJ's denial of asylum, withholding, and CAT; government's unwillingness or inability to curb domestic violence is distinguishable from its treatment of rape as a separate criminal offense; Respondent was raped by Hernandez, "a member of a powerful local criminal gang . . . She did not report the rape to the police because she believed the police would not investigate a date rape, and because she was afraid of how her father would react." (at 1070–71). Thereafter, he again raped her. At evidentiary hearing she testified that if she returned to Honduras, "Hernandez and his friends would find her and her son and harm them . . . [S]he believed the Honduran police would be of no help . . . Hernandez had sworn to find her and had attempted to enter the United States on two occasions to do so." (at 1071). The Respondent's testimony was accepted as fully credible. (at 1071); THOMPSON.

Unable or Unwilling to Control/ Private Agent. "[H]er asylum claim fails because she has not shown that an agent of the government of Honduras committed the rapes or that the government of Honduras is unable or unwilling to control rape in that country." (at 1072). The personal criminal acts of Hernandez were not found to form an objective basis for relief.
Unable or Unwilling to Control/ Criminal Statute. Even assuming prior rapes by gang leader boyfriend constituted past persecution on account of membership in a particular social group, alien has not shown the government unwilling or unable to control rape. Although Country Report shows domestic violence is widespread, Honduras treats rape as a separate offense, classifying it as a public crime carrying a 3 to 9 year prison sentence. (at 1072).
Unable or Unwilling to Control/ Failure to Report. "[Alien] testified that she did not report her rapes to the police because she 'thought they were not willing to do anything because they would say that we were boyfriend and girlfriend and that they would not say or think that that was [not] normal.' She also testified she was afraid of how her father, who had beaten her in the past, would react. Apart from this testimony, which does not compel a finding that the Honduran government is unwilling or unable to control rape in that country, the record is limited to the information contained in the *Country Report* profile of Honduras. That information is not particularly enlightening." (at 1072).
CAT/ Raised as Claim. Alien must specifically and distinctly raise and argue claim under CAT and cannot simply argue she met the standard for withholding and therefore has also met the more likely than not standard under CAT, as the two have distinct standards. *See Kamalthas v. INS*, 251 F.3d 1279, 1283 (9th Cir. 2001). (at 1072).

***Lainez-Ortiz v. INS*, 96 F.3d 393 (9th Cir. 1996) (A70-432-319)**; upholding BIA's denial of motion to reopen to apply for asylum; petition denied; SCHWARZER; (REINHARDT,

dissenting, interpreted the regulations to require a petitioner who has not previously filed for asylum and moves to reopen in order to do so, need only provide a reasonable explanation for his failure to apply earlier and does not have to provide previously unavailable, material evidence).

Motion to Reopen/ No New Evidence. "In the instant case, petitioner's motion to reopen did not claim to offer evidence previously unavailable; it only explained his previous failures to claim asylum and described his activities in Honduras upon which he justifies his fear of persecution. Accordingly, there was no basis upon which the BIA could have found that any new facts were being offered." (at 396).

***Ramos-Vasquez v. INS*, 57 F.3d 857 (9th Cir. 1995)**; vacating and remanding based on finding that (1) BIA's adverse credibility determination was not based on substantial evidence; (2) BIA did not abuse its discretion in finding that shooting of applicant by soldier who mistook him for his father was not evidence of persecution; (3) BIA did not abuse its discretion in rejecting applicant's claim that he feared persecution by rebels; (4) BIA's failure to be explicit about which standard it was applying was reversible error; and (5) remand was required for BIA to consider applicant's testimony regarding treatment of military deserters and whether his desertion qualified as political opinion for which he was reasonably likely to face persecution; T.G.NELSON; (TROTT, concurring, rejects the majority's guidance offered to the BIA on the execution of military deserters).

Well-Founded Fear/ Objectively Reasonable, Not Found. Alien's apprehension that he would suffer reprisals by anti-military forces who will impute to him the actions of the military was not enough to establish a well-founded fear of persecution because he offered no evidence in support of this claim. (at 861).

Persecution/ Random Attack. Shooting of alien by a soldier who mistook him for his father was an incident of isolated violence; alien did not argue that the shooting was in any way due to his own political opinion, and "a case of mistaken identity, at least under these circumstances, is not tantamount to persecution." (at 861).

Protected Grounds/ Political Opinion/Desertion. If soldier deserts in order to avoid participating in acts condemned by international community as contrary to basic rules of human conduct, and is reasonably likely to face persecution should he return to his native country, his desertion may be grounds for asylum based on political opinion.

India

Khan v. Holder, 584 F.3d 773 (9th Cir. 2009)
Kaur v. Holder, 561 F.3d 957 (9th Cir. 2009)
Ahir v. Mukasey, 527 F.3d 912 (9th Cir. 2008)
Goel v. Gonzales, 490 F.3d 735 (9th Cir. 2007)
Singh v. Gonzales, 491 F.3d 1019 (9th Cir. 2007)
Kohli v. Gonzales, 473 F.3d 1061 (9th Cir. 2007)
Kumar v. Gonzales, 444 F.3d 1043 (9th Cir. 2006)
Singh v. Gonzales, 439 F.3d 1100 (9th Cir. 2006)
Bhasin v. Gonzales, 423 F.3d 977 (9th Cir. 2005)
Kaur v. Gonzales, 418 F.3d 1061 (9th Cir. 2005)
Singh v. Gonzales, 403 F.3d 1081 (9th Cir. 2005)
Singh v. Ashcroft, 393 F.3d 903 (9th Cir. 2004)
Kaur v. Ashcroft, 388 F.3d 734 (9th Cir. 2004)
Cheema v. Ashcroft, 383 F.3d 848 (9th Cir. 2004)
Kaur v. Ashcroft, 379 F.3d 876 (9th Cir. 2004)
Singh v. Ashcroft, 367 F.3d 1182 (9th Cir. 2004)
Singh v. Ashcroft, 367 F.3d 1139 (9th Cir. 2004)
Singh v. Ashcroft, 362 F.3d 1164 (9th Cir. 2004)
Singh v. Ashcroft, 361 F.3d 1152 (9th Cir. 2004)
Padash v. INS, 358 F.3d 1161 (9th Cir. 2004)
Singh v. Ashcroft, 351 F.3d 435 (9th Cir. 2003)
Malhi v. INS, 336 F.3d 989 (9th Cir. 2003)
Singh v. Ashcroft, 301 F.3d 1109 (9th Cir. 2002)
Singh v. INS, 292 F.3d 1017 (9th Cir. 2002)
Kaur v. INS, 237 F.3d 1098 (9th Cir. 2001)
Kataria v. INS, 232 F.3d 1107 (9th Cir. 2000)
Shah v. INS, 220 F.3d 1062 (9th Cir. 2000)
Sidhu v. INS, 220 F.3d 1085 (9th Cir. 2000)
Maini v. INS, 212 F.3d 1167 (9th Cir. 2000)
Singh-Kaur v. INS, 183 F.3d 1147 (9th Cir. 1999)

***Khan v. Holder*, 584 F.3d 773 (9th Cir. 2009)(A76 851 013)**; affirming a denial of relief on the basis that respondent "had engaged in terrorist activity." Khan worked with Jammu Kashmir Liberation Front (JKLF). He claimed that he was affiliated only with the political wing and that his work was entirely non-violent. He admitted to knowing that he was part of a movement which was arms struggle. His work consisted of planning political activities and raising funds. He was one of the primary organizers of the political wing; he

advised the political wing on how to spend its funds. Credibility was not at issue. FLETCHER, W.

Bars to Asylum/Terrorist Bar. "Khan admitted that he knew that a wing of the JKLP was dedicated to armed struggle against the Indian government and that he knew that his wing was fighting the Indian Army . . . Khan had not demonstrated that he did not know and reasonably should not have known about the JKLF's terrorist activities." The court cited with approval the Board's decision in *Matter of S-K-*, 23 I&N Dec. 936 (BIA 2006) with regard to an alien in this category being ineligible for relief on the basis of his solicitation of funds for a terrorist organization. The court also cited *McAllister v. Attorney General*, 444 F.3d 178 (3rd Cir. 2006), which involved such a classification for an ex-IRA activist.

Refugee Law/Treaty Obligations. The court founds that provisions of the INA trumped any treaty obligations that the U.S. might have with regard to protection of refugees in terms of this respondent's activities. The court cited *U.S. v. Aguilar*, 883 F.2d 662, 680 (9th Cir. 1989) (superseded on other grounds) and *U.S. v. Gonzalez-Torres*, 309 F.3d 594 (9th Cir. 2002).

***Ahir v. Mukasey*,** 527 F.3d 912 (9th Cir. 2008) **(A70-623-855)**; upholding a finding of a frivolously filed asylum application. The court specifically adopted the analytical framework of *Matter of Y-L-*, 24 I&N Dec. 151 (BIA 2007). WALLACE.

Asylum Application/ Frivolous. The first requirement, that is to say, "notice of the consequences of filing a frivolous application" may have been met by the advisal above the signature block on the I-589. (at 917). However, it was not raised before the Board, so "we do not decide whether this notice was adequate." (at 918). The second requirement is to make "explicit findings." *Id.* This was met by the "inconsistencies between Ahir's asylum applications and her adjustment application" and the lack of any adequate response. *Id.* The third requirement is that the findings be "supported by a preponderance of the evidence." *Id.* The court did not require that there be "direct extrinsic evidence that Ahir fabricated her asylum applications" and noted that she "did not admit that she lied." *Id.* "In Ahir's 2001 asylum application, she stated that she had been arrested on three specific dates as a result of her membership" in a claimed women's rights organization and that she had been physically mistreated. *Id.* "These claims are directly inconsistent with her subsequent assertion in her application for adjustment, that she had never been arrested...and with her repeated statements that she had never been arrested anywhere in the world." *Id.* The fourth requirement is "the applicant be given ample opportunity during his hearing to address and account...for any finding of frivolousness." (at 919). There was no claim that Ahir had not understood the representations made in the applications or had received ineffective assistance in their preparation.

***Goel v. Gonzales*, 490 F.3d 735 (9th Cir. 2007) (A78-638-722)**; affirming the denial of asylum and the motion to reopen; Goel was a member of the Nirankari religion. The

asylum claim was denied for lack of credibility. While on appeal, the applicant filed a motion to reopen on the basis of a favorable polygraph exam and a medical evaluation finding that scars on the applicant's body "may be consistent" with his claims of physical abuse on account of his religious beliefs; PER CURIA.

Evidence/ Polygraph. The BIA stated its view that polygraph evidence is unreliable. The court disagreed, stating: "We do not necessarily preclude the discretionary consideration of polygraph evidence by an IJ or the BIA at earlier stages of a removal proceeding." (at 739).
Motion to Reopen/ No New Evidence. The denial of the Motion to Reopen was justified on the basis that the new evidence could have been presented at the time of hearing. Both the polygraph and the medical exam concerned events that occurred well before the asylum hearing, and since Goel was not in custody while awaiting his removal hearing, he was free to gather that evidence. Therefore, it was not previously "unavailable" as required by 8 C.F.R. § 1003.2(c)(1).
Credibility/ Inconsistencies, Material. There were material inconsistencies between the written record and the oral testimony at hearing in terms of the details of claimed physical assaults that went to the "heart of the claim." (at 739) (citing with approval *Wang v. INS*, 352 F.3d 1250, 1258-59 (9th Cir. 2003).

***Kohli v. Gonzales*, 473 F.3d 1061 (9th Cir. 2007) (A79-610-568)**; affirming a denial of relief. The decision primarily deals with whether a defect in the NTA constituted a basis for termination of proceedings. The asylum claim was waived in that "Kohli admits that she is not eligible for asylum, " because the application was not timely filed. Respondent testified that while in school she became a member of a human rights organization and "particularly opposed the practices of sati and dowry" – "the former Hindu practice of a widow immolating herself on her husband's funeral pyre." Respondent reported having engaged in various demonstrations and activities on behalf of her beliefs. She was detained for five hours by the police and they "pushed her down into the chair." There were reports of harassment but no further claim of physical mistreatment. CALLAHAN.

Credibility/ Inconsistencies, Material. The court upheld the adverse credibility determination on the basis of material inconsistencies between the I-589 and the testimony in terms of the length of the detention (in the I-589, she reported overnight, but testified that the detention was for five hours), and the extent of the "abuse, " i.e. only being pushed "Kohli's attempt to divert blame to the person who helped her prepare her declaration is not persuasive because Kohli is fluent in English and had no need for assistance in completing her declaration."
Persecution/ Not Rising to Level Of: Harassment and single incident of detention does not amount to persecution.
Notice to Appear/ Deficiency Of. The NTA was not legally insufficient in that the name of the issuing officer was not legible nor was there a title. The court restated the principle that "the claimant must show that he was prejudiced by the agency's mistake, " citing *Patel v. INS*, 790 F.2d 786, 788 (9th Cir. 1986), among other cases. Kohli's argument failed because she had not shown that the deficiency "had some impact on her rights."

Administrative Proceedings/ Presumption of Admin Regularity. "The Immigration Court's jurisdiction is also supported by the well established principle of federal law that administrative agencies are entitled to a presumption that they 'act properly and according to the law.'" (citing *FCC v. Schreiber*, 381 U.S. 279, 296 (1965) and five other authorities).

***Kaur v. Gonzales*, 418 F.3d 1061 (9th Cir. 2005) (A73-419-669)**; A Sikh Indian had her claim denied for lack of credibility due to inconsistencies in the record. These consistencies included her marital status, whether she had been raped, and the extent of her political activities. BYBEE.

Credibility/ Application Prepared by Third Party. The court rejected the argument, "because [Kaur] eventually settled upon a story far less dramatic than its precursor, we must ignore her inconsistencies." The fact that the Respondent's first application was prepared, "by a third party" and that "the petitioner signed the application without demonstrating any awareness of its contents, the principle has little application to these facts" in that, "she was given an opportunity to clarify her testimony" prior to the hearing before the IJ. Additionally, "she repeated the version of the events outlined in her first asylum application and swore to the verity" before the asylum adjudicator.
Credibility/ Inconsistencies, Material: "The repeated and significant inconsistencies in Kaur's testimony deprived her claim of the requisite 'ring of truth'" or in other words, "the truth in this case has been a moving target."
Credibility/ REAL ID Act Standard. In dictum, the court notes, "our review of IJ 'adverse credibility findings' is significantly restricted.'"

***Singh v. Ashcroft*, 367 F.3d 1139 (9th Cir. 2004) (A73-416-135)**; upholding adverse credibility determination; petition denied; RYMER; (HAWKINS, dissenting, urged remanding the transcript for clarification).

Credibility/ Inconsistencies, Material. Alien's testimony that he was in hiding for five years was inconsistent with testimony that he was in charge of family farm, alien had date of arrest wrong on asylum application, alien testified that he was political leader at a time when country report indicated that leader was in custody, alien knew little about political party he claimed to be part of and could not articulate work he did for group, and alien did not participate in elections even though establishing separate state through electoral process was objective of alleged political activity.
Credibility/ Translation. "Given the numerous specific points on which the IJ found Singh's testimony not credible, including testimony that was neither confusing nor unintelligible, we cannot conclude that a better translation would have made any difference in the hearing's outcome." (at 1144).

***Singh v. Ashcroft*, 361 F.3d 1152 (9th Cir. 2004) (A77-428-492)**; upholding BIA's dismissal of alien's appeal based solely on procedural grounds—failure to timely file appeal brief with the BIA; petition denied; TALLMAN; *distinguished by* *Garcia-Cortez v. Ashcroft*, 366 F.3d 749 (9th Cir. 2004).

***Padash v. INS*, 358 F.3d 1161 (9th Cir. 2004) (A73-396-582)**; upholding denial of asylum and withholding, but remanding for determination of adjustment of status upon finding alien qualified under CSPA; REINHARDT.

Persecution/ Not Rising to level Of. Alien's testimony that two separate and unrelated groups of restaurant patrons initiated fights with his family—fights that did not result in any physical harm—and that during the second incident a threat was made against him and his father, fell short of the showing necessary to compel a finding of persecution; evidence and record also fell short of establishing that applicant had a well-founded fear of future persecution if he was returned to India, particularly in light of State Department country report making it clear that government of India did not systematically discriminate against Muslims on grounds of race and religion.

Nexus/ Motive Not Found. Alien did not establish that he would either be forced into military service or singled out for persecution by military officials during such service on account of his religion or any other statutorily-protected ground.

***Singh v. Ashcroft*, 351 F.3d 435 (9th Cir. 2003)**; affirming denial of habeas corpus challenge to BIA's denial of CAT; MATZ.

CAT/ More Likely Than Not, Not Found; Persecution/ Of Family. BIA's determination that alien was not likely to be tortured if removed to India was supported by substantial evidence that, although alien's father had been threatened by his mother's family, who are police officers in India, alien had not been tortured in past, his mother's family members had not threatened him, and alien was not likely to be tortured if he settled somewhere other than his hometown.

Bars to Asylum/ Particularly Serious Crime, Found. Assault with a weapon likely to produce great bodily harm found to be particularly serious crime, even when Respondent only conceded having "kicked" victim. Not eligible for asylum and withholding. *See* *Kamarenko v. INS*, 35 F.3d 432 (9th Cir. 1994); *Matter of B-*, 20 I&N Dec. 42 (BIA 1991).

***Malhi v. INS*, 336 F.3d 989 (9th Cir. 2003) (A75-250-325)**; upholding adverse credibility determination; petition denied; CLIFTON.

Credibility/ Inconsistencies, Material; Discrepancy, Spelling or Name. Geographic discrepancies which went to the heart of asylum applicant's claim of being persecuted in Punjab for being a member of AISSF, a dissident political organization in India, constituted sufficiently specific, cogent reasons for adverse credibility finding. A myriad of other inconsistencies were noted by the IJ and BIA, including the use of a false name in the asylum application.

Credibility/ Corroboration Required. "Only one of the several affidavits he submitted attested to Malhi being arrested, that being the one from his father, and at best it only partially corroborated Malhi's version of events. Accordingly, given the lack of corroborating evidence, we cannot say that we are compelled to believe Malhi's story." (at 993).

Well-Founded Fear/ Nationwide Danger. Membership in AISSF does not establish a well-founded fear of persecution because, according to the State Department report, membership in organization alone would not pose a nationwide danger.

Singh-Kaur v. INS, **183 F.3d 1147 (9th Cir. 1999) (A74-149-590)**; upholding adverse credibility determination; petition denied; GRABER; (HAWKINS, dissenting, argues that at no point in the proceeding did the IJ advise Petitioner that his identity was in issue).

Credibility/ Inconsistencies, Material; Discrepancy, Spelling or Name. Substantial evidence supported credibility determinations by IJ adverse to asylum applicant claiming he was persecuted because he protested against police treatment of Sikhs while he served as elected village leader in India; IJ stated that applicant literally jumped around in his seat when being cross examined, record reflected inconsistencies in applicant's testimony, record indicated that during course of proceedings applicant suddenly started using a name that appeared in newspaper articles describing incidents to which he testified, and IJ stated that virtually all details in applicant's testimony also appeared in newspaper article.

Credibility/ Demeanor. Court of Appeals gives special deference to a credibility determination of an IJ based on demeanor. "Certainly most witnesses are uncomfortable and nervous when being cross-examined and, perhaps, when being questioned by a judge. Nonetheless, we find no reason to discount the IJ's reliance on Petitioner's demeanor here. As a judge, she has observed many people in Petitioner's position, and we defer to her ability to differentiate between the usual level of anxiety and Petitioner's behavior, for example, 'literally jump[ing] around in his seat.'" (at 1152).

Kaur v. Holder, 561 F.3d 957 **(9th Cir. 2009)(A 72 484 174)**; reversing and remanding a denial of relief for a second time in another published decision. In the first decision, *Cheema v. Ashcroft*, 383 F.3d 848 (9th Cir. 2004), the court found "there is no evidence that

Kaur engaged in terrorist activity and remanded "for the AG to exercise his discretion as to the asylum claim." In denying asylum in the exercise of discretion, the government relied on "evidence classified as secret" that Kaur "had not been completely candid before the IJ", and that she had engaged in "immigration fraud" by paying money to get her nephew into the U.S. and attempting to smuggle her daughter as well. McKEOWN.

Due Process/ Reliance on Secret Evidence. The court held that the summary of the classified evidence provided to respondent was "simply insufficient to meet the requirement in 8 C.F.R. § 1240.33(c)(4) requiring that it be as 'detailed as possible' to allow Kaur an opportunity to offer opposing evidence" and that it otherwise contravened her due process rights.

Discretion/ Administrative Exercise Of, Not Upheld. "The BIA may not use an unspecified 'lack of candor' reference to buttress a discretionary denial of asylum, " citing to *Kalubi v. Ashcroft*, 364 F.3d 1134 (9th Cir. 2004).

***Singh v. Gonzales*, 491 F.3d 1019 (9th Cir. 2007) (A72-116-384)**; reversing and remanding a denial of asylum; A Sikh asserted a claim based on being mistreated over support for Sikh rights. The IJ drew an adverse inference from Singh's refusal to allow access to a Canadian immigration file under his name. Without Singh's signed consent, Canada would not release the information. The respondent refused to sign the request on the basis that if he did so, his family remaining in India might be at risk. In a forceful dissent, Judge Rawlison argued: "We should not reward those who deliberately thwart the administrative processes we have established to assess eligibility for asylum." (1029); HENDERSON (district court judge); Strong dissent by RAWLINSON.

Evidence/ Corroboration Not Required; Negative Inference; Credibility/ Explicit Finding. "The IJ noted that Singh had submitted no documents in support of his asylum application confirming his identity, and that corroborating evidence from Canadian immigration records might support his claim." *Id.* at 1022. "[T]he IJ denied Singh's application solely on the basis of the negative inference he drew from Singh's refusal to release the Canadian records." *Id.* at 1024. While the court would permit the IJ to draw a negative inference from the fact that Singh withheld evidence, there was no "explicit credibility finding, " and hence the IJ must accept the witness's testimony as true. *Id.* at 1025. "[T]he BIA may not require independent corroborative evidence from an asylum applicant who testifies credibly in support of his application." *Id.* at 1025. "The IJ's broad use of the 'negative inference' was therefore the functional equivalent of demanding corroborating evidence." *Id.* The court extensively cited and relied upon the cases of *Kataria v. INS*, 232 F.3d 1107 (9th Cir. 2000), and *Ladha v. INS*, 215 F.3d 889 (9th Cir. 2000).

***Kumar v. Gonzales*, 444 F.3d 1043 (9th Cir. 2006) (A75-579-218)**; reversing and remanding a denial of relief on the bases of an adverse credibility finding and a determination that the mistreatment imposed was not on account of one of the protected criteria; The petitioner claimed that he was a citizen of India from Jammu and Kashmir who was significantly physically mistreated by the Indian police who thought he was assisting a "militant." He

himself was a "law-abiding citizen with no political contact." The respondent's parents continued to live in the home area without incident. The IJ had found that the petitioner's claim inconsistent with country conditions, inherently unbelievable, the mistreatment not "on account of" one of the protected criteria, and marked by outright fraud. The panel's factual summary of the claim was taken from the respondent's "sworn declaration." This was done notwithstanding the respondent's lack of fluency in English and that the "application contains numerous spelling and grammatical errors which suggest that [the preparer] was generally careless...or was otherwise unqualified or incompetent." The panel found the respondent to be "credible." REINHARDT (strong dissent by KOZINSKI).

Credibility/ IJ Speculation. The IJ's finding from his visual examination of certain of the supporting documents as to what he felt were self evident forgeries was rejected as "speculation." The majority suggested that it would be far more preferable "prior to rejecting documentary evidence" for IJ's to "consult experts." The fact that there were photographs of asserted trauma that in fact portrayed the respondent's brother, which was also used to support the finding, was rejected as "clerical error."

Country Reports/ To Support Claim, Sufficient. The majority cited to "country reports" which "stated... that India was the site of significant civil rights abuses stemming from 'deficient police methods and training' as well as 'violent successionist movements' responsible for 'extrajudicial executions and other political killings, torture, and brutality.'"

Protected Grounds/ Imputed Political Opinion, Found. "We have repeatedly held that an applicant can establish imputed political opinion based upon the persecutor's erroneous belief as to the applicant's political affiliation or opinion."

CAT/ Torture, Not Found. The panel upheld the denial of CAT relief. This was so notwithstanding the panel having found that the respondent had "endured a month-long detention and serious physical abuse" as well as having received a letter from his parents "that the local police... would kill him if he returns to India."

Dissent. After reviewing a number of Ninth Circuit precedents, Judge Kozinski expressed his agreement with Judge O'Scannlain's statement in *Jabril v. Gonzales*, 423 F.3d 1129, 1138 (9th Cir. 2005) about "our often irreconcilable precedents." He went on to further comment: "any asylum applicant who is a skillful enough liar - and many who aren't - must be believed no matter how implausible or far fetched their story" and "IJ's who are doubtlessly chary of being vilified by August court of appeals judges, become even more reluctant to make adverse credibility findings, even when they have good reason to believe the asylum applicant is lying."

***Singh v. Gonzales*, 439 F.3d 1100 (9th Cir. 2006) (A76-846-897)**; reversing adverse credibility finding and remanding. The denial of relief under CAT was sustained. In 1996, a non-political non-baptized Sikh transported a group of demonstrators for "an independent Sikh state." He claims to have been arrested as a result thereof and significantly mistreated. In January of 1997, he claims that the police warned his father that "he would not be spared" if he again transported "protestors." ALARCON.

Credibility/ IJ Speculation; Corroboration Not Required. Although the IJ identified a series of inconsistencies in the record they were found to not be "sufficient" - such as "who paid the

bribe" to secure his release or if the respondent had transported "demonstrators" "many times" or "only once or twice." The IJ had found the respondent's testimony to be "extremely general." The assertions made to support the assessment were rejected as impermissible "speculation" by the IJ. The effort to justify the finding on the basis of failure to present proper corroborating documentation was also rejected. "Supporting documentation is only required when the applicant's testimony alone is insufficient to support the claim." *Salaam v. INS*, 229 F.3d 1234, 1239 (9th Cir. 2000). The court found that his testimony alone was sufficient.

Bars to Asylum/ Safe Third Country. The court cited *Ding v. Ashcroft*, 387 F.3d 1131, 1139-70 (9th Cir. 2004) for not accepting a denial of a claim or a finding of incredibility based on failure to seek asylum in the country that the respondent was legally residing in during the course of a "seven month visa."

Identity/ Identification Documents. The IJ had found the respondent not to have adequately established his identity. She based her decision on a portion of the Department of State Foreign Affairs Manual which was not in the record. This was found to be improper "speculation." The court labeled the mistranslated birth certificate as "irregular." It cited to *Yeimane-Berhe*, 393 F.3d 907, 911 (9th Cir. 2004) where even a fraudulent document that "goes to the heart of the claim" cannot be used to justify an adverse credibility finding unless it can be demonstrated that the applicant knew of the falsity.

Credibility/ State Department Reports, Reliance On Rejected. The IJ denied relief on finding that the transport of the demonstrators on the one or two occasions as finally claimed was not consistent with such in the record given the sharp "reduction in militant Sikh terrorism as a result of an antiterrorism campaign in 1991-92." The court cited to *Zheng v. Ashcroft*, 397 F.3d 1139, 1143-44 (9th Cir. 2005) for "general descriptions of the State Dept.'s report to find Mr. Singh's testimony implausible and incredible was thus improper."

Nexus/ Mixed Motive. "The fact that the police may have acted pursuant to an anti-terrorism law would not necessarily rule out a statutory protected motive, " citing to *Zhang v. Ashcroft*, 388 F.3d 713, 719-21 (9th Cir. 2004) (relating to the unauthorized practice of Falun Gong).

CAT/ Internal Relocation. Although the court remanded for consideration of the asylum and withholding of removal claims it upheld the denial of CAT. The court did not cite any facts to support that conclusion. The court did comment: "Mr. Singh bears the burden of proving he 'would be unable to live elsewhere in the country safely." *Hassan v. Ashcroft*, 380 F.3d 1114, 1123 (9th Cir. 2004) (petitioner feared mistreatment as retaliation for criticism of local politicians but did not produce evidence of his inability to escape mistreatment by internally relocating. The Hasan court had found that the denial of asylum / withholding of removal based on the reasonableness of internal relocation could not stand but it affirmed the denial of CAT on that theory given what it found to be the respondent's higher burden of proof). "If Mr. Singh's fear is based on the mistaken belief of police in a certain area, he would presumably be safe in another area of India where the police do not take him for a separatist. The record contains no evidence that simply being an apolitical Sikh would cause police to torture Mr. Singh if they do not believe he is a separatist."

***Bhasin v. Gonzales*, 423 F.3d 977 (9th Cir. 2005) (A77-424-778)**; reversing a denial of a motion to reopen following the dismissal of an appeal denying the applications for asylum and withholding of removal. The alien's son served as "a government inspector in the Border Security Force" where he had been involved in the apprehension of a terrorist

leader. "Several members of her family had already disappeared and she claims that this persecution is on account of membership in her familial social group." She asserted that she had been subjected to having been kidnaped, physical violence, and threatened. The IJ denied relief on the basis that the future fear and prior actions had been prompted by "the actions taken by her son...in the arrest of [terrorist] leadership." Notwithstanding the Board's dismissal of affidavits as "self serving, " the court restated the principle from *Loadha v. INS*, 215 F.3d 889, 905 (9th Cir. 2000), that, "the exclusion of self serving documents is not sound practice"; the court found that the alien had established a prima facie basis for relief.

***Singh v. Gonzales*, 403 F.3d 1081 (9th Cir. 2005) (A73-220-243)**; reversing IJ's adverse credibility decision (Board aff'd without opinion) and remanding; Sikh applicant asserted past persecution at the hands of the Indian police as a result of his advocacy for the Sikh homeland of Khalistan. The IJ found him not credible on four bases: 1) omission of details concerning his first arrest that were recounted in a supportive affidavit from his father; 2) discrepancies between dates of arrests reported to the asylum adjudicator and those in his testimony; 3) inconsistency between alien's asserted role in the 1992 election boycott and that stated in his father's affidavit; and 4) inconsistency between his father's affidavit and alien's testimony as to when his last arrest took place. Additionally, relief was denied in the alternative due to changed country conditions, a ground not addressed by the court. BERZON; (Judge Leavy, concurring in the result, criticized the majority for "fact finding" by referring to non- record materials that were utilized to suggest that the failure to recall specific dates is not an appropriate basis to justify an adverse credibility finding).

Credibility/ Detail, Lack Of; Discrepancy, Dates. "The ability to recall precise dates of events years after they happen is an extremely poor test of how truthful a witness's substantive account is." (at 1090–91). "'[T]he mere omission of details is insufficient to uphold an adverse credibility finding.' *Bandari v. INS*, 227 F.3d 1160, 1167 (9th Cir. 2000)." Because all of the written evidence must be considered by the IJ, *see Ochave v. INS*, 254 F.3d 859, 865 (9th Cir. 2001), the omissions were merely "peripheral details that he had already provided." (at 1085). The court again relied on *Bandari*, 227 F.3d at 1166 for the rule: "we have frequently characterized discrepancies in dates which reveal nothing about an asylum applicant's fear of his safety to be minor inconsistencies that cannot form the basis of an adverse credibility finding." (at 1087).

Assessment to Refer/ Reliance On. The Assessment to Refer was not deemed as "reliable" when the asylum adjudicator who authored the same did not testify. The court noted its concern regarding over-reliance on hearsay in the assessment's summary of the respondent's testimony, citing to, among other cases, *Saidane v. INS*, 129 F.3d 1063, 1065 (9th Cir. 1997). The court further compared the asylum adjudicator's interview to an "airport interview" and stated the standards outlined in *Li v. Ashcroft*, 378 F.3d 959, 962-63 (9th Cir. 2004), must be met before such could be accepted as "reliable." Additionally, the assessment does "not contain any record of the questions and answers" nor a "transcript" and hence is not "substantial record evidence." (at 1089).

Singh v. Ashcroft, **393 F.3d 903 (9th Cir. 2004) (A77-382-015)**; reversing BIA's adverse credibility determination and remanding; NOONAN.

Credibility/ Corroboration Not Required. Alien's lack of corroborating evidence of the existence of the Research and Analysis Wing (RAW), an intelligence office of the Indian government, could not be grounds for finding alien not credible.
Administrative Proceedings/ Judicial Notice. Judicial notice is appropriate "to ensure that administrative or judicial ignorance is not insulated from review through hyper-technical application of the general rule that the court can consider only evidence considered by the Board." The court was free to conduct a Lexis search of reputable international media sources to substantiate alien's claim of the existence of RAW. (at 906-7).

Kaur v. Ashcroft, **388 F.3d 734 (9th Cir. 2004) (A72-176-675)**; remanding with instructions to allow asylum applicant's son to testify; GRABER.

Evidence/ Testimony, Exclusion Of. Although alien's son was relatively young at the time the relevant events occurred, it should not have prevented him from testifying, in the absence of an inquiry by the IJ into son's ability to perceive, recall, and recount the events.
Evidence/ Child Testimony . Despite alien's admission that her earlier asylum application was false and that she had lied to the asylum officer during the interview, the IJ could not make an adverse credibility determination without hearing testimony from alien's son, even though he was relatively young at the time the events occurred.

Cheema v. Ashcroft, **383 F.3d 848 (9th Cir. 2004) (*amending and superceding* 372 F.3d 1147 *and* 350 F.3d 1035) (A72-484-174)**; granting CAT and withholding to wife; remanding consideration of wife's asylum application to BIA; remanding statutory withholding and asylum applications of husband to BIA; denying withholding under CAT to husband; affirming grant of deferral under CAT for husband; NOONAN; (RAWLINSON, dissenting, found that the couple had provided material support to major international terrorists and that they threaten the security of the U.S. "Car bombings, assassinations of government officials, massacres—world wars have begun with less impetus.").

Summary. (1) Wife's sending money to aid Sikh widows and orphans, without more, did not constitute terrorist activity for purpose of bar to withholding of deportation; (2) husband's activities of raising money that reached Sikh resistance organizations in India and having phone conversations with Sikh terrorists constituted terrorist activity; (3) however, terrorist activity affecting India must have endangered U.S. security to support bar.
CAT/ More Likely Than Not, Found. Husband demonstrated probability of harm sufficient for eligibility for relief under CAT based on being brutally tortured by Indian authorities and that he "is one of the few prominent pro-Khalistan leaders in the world who would be in danger if returned to India." Wife would also more likely than not be tortured if returned to India. (at 853).

Bars to Asylum/ Terrorist Bar. Wife's activities in sending money to aid Sikh widows and orphans did not constitute terrorist activity, and thus could not support a bar from the relief of asylum or withholding of deportation; evidence did not establish link between donations and Sikh terrorist organizations, absent showing that widows or orphans were engaged in terrorism, had committed or were planning to commit terrorist acts, or were conduits to terrorist organizations.
Bars to Asylum/ Terrorist Bar. Substantial evidence that husband raised money that reached Sikh resistance organizations in India, and that alien had telephone conversations with Sikh militants known to engage in terrorist activities, supported determination that husband engaged in terrorist activity; however, no link between the alien's acts of terrorism in India and the endangering of lives, property or welfare of U.S. citizens was demonstrated. Remanded to BIA for decision on discretionary issue of whether husband's terrorist activity endangered U.S. security.

Kaur v. Ashcroft, **379 F.3d 876 (9th Cir. 2004) (A75-310-310)**; reversing IJ's adverse credibility determination and remanding; W.FLETCHER; (TALLMAN, dissenting, disagreed with the majority's divide-and-conquer approach to undermine the adverse finding, and finding that the IJ's articulated reasons were sufficiently cogent and substantial).

Credibility/ Discrepancy, Spelling or Name. IJ's adverse finding on credibility of asylum applicant, to extent based upon discrepancy between manner in which applicant spelled her name and spelling of name on Indian passport or upon manner in which signature sheet was embossed onto passport, was not supported by substantial evidence, where the IJ's statement that Indian government would not have embossed signature sheet on passport in such manner as to cover up other writing thereon was pure speculation, and where the IJ failed to address applicant's explanation for discrepancy in spelling based on fact that her first name was Punjabi word.
Credibility/ Detail, Lack Of. IJ's adverse credibility finding, to extent based upon applicant's initial lack of specificity regarding encounter between her father and Sikh militants, and upon fact that she provided more detailed account only upon prompting by the IJ, was not supported by substantial evidence; this encounter did not go to the heart of applicant's asylum claim, and it was pure speculation as to how much detail a truth-telling asylum applicant would have provided when testifying through translator who spoke broken English.
Credibility/ Ignorance. Asylum applicant's purported ignorance as to whereabouts of her father, who was himself allegedly a victim of persecution by police, and her failure to produce affidavits or other evidence from relatives outside the US corroborating his disappearance, was not substantial evidence supporting IJ's adverse credibility finding, where applicant's purported ignorance was entirely consistent with her story.

Singh v. Ashcroft, **367 F.3d 1182 (9th Cir. 2004) (A76-728-212)**; remanding with instructions to grant alien's motion to reopen; (1) fact that appeal of asylum denial was summarily

dismissed did not compel finding that alien was not prejudiced by any ineffective assistance of counsel; (2) BIA could not require alien to submit brief on merits of asylum claim as part of his motion to reopen; W.FLETCHER.

Ineffective Assistance/ Prejudice Found. "Stated affirmatively, '[t]o show prejudice, [Singh] must show that the BIA could plausibly have determined that he was [eligible for relief] based on the record before it.' [*Rojas-Garcia v. Ashcroft*, 339 F.3d 814, 827 (9th Cir. 2003)]. In the record before it, the BIA had ample evidence that could plausibly have supported a finding that Singh was eligible for asylum. Singh testified credibly before the IJ that while he was in India he had been arrested and beaten numerous times because of his suspected connections to Sikh separatists affiliated with the All India Sikh Students Federation. In his motion to reopen, Singh reiterated the content of his underlying claim for asylum when he explained that he 'had suffered past persecution as he was detained and tortured by the Indian security forces for his alleged association with the Sikh separatist movement.'" (at 1189).

***Singh v. Ashcroft*, 362 F.3d 1164 (9th Cir. 2004) (*amending and superseding* 340 F.3d 802 *on denial of reh'g*) (A72-020-928)**; reversing adverse credibility determination and remanding for asylum consideration; WARDLAW.

Notice. BIA could not deny alien's motion to file a late brief by asserting that the motion was untimely because the BIA mailed the briefing notice to an address different from the one provided by the alien.

Credibility/ Inconsistencies, No Attempt to Enhance Claim. Alien's first statement that he had no contact or connection with militants may be inconsistent with his later statement that he had declined to join a militant group; but alien is not claiming he was persecuted by militant Sikhs and repeatedly testified that the militants never acted unjustly toward him, and the discrepancy cannot be viewed as an attempt to enhance his claims. (at 1170–71).

***Singh v. Ashcroft*, 301 F.3d 1109 (9th Cir. 2002) (A76-841-588)**; reversing adverse credibility determination and remanding for consideration of asylum and withholding; FERGUSON; (TALLMAN, dissenting, agreed that the discrepancies could plausibly be interpreted as not contradictory or as minor, but that such an interpretation is not *compelled* by the record).

Credibility/ Corroboration Provided. "An adverse credibility determination may be reversed on appellate review when the applicant has provided corroborating evidence, even if the IJ had some basis for disbelieving the applicant. *Cf. Sidhu v. INS*, 220 F.3d 1085 (9th Cir. 2000) ('[W]here the IJ has reason to question the applicant's credibility, and the applicant fails to produce non-duplicative, material, easily available corroborating evidence and provides no credible explanation for such failure, an adverse credibility finding will withstand appellate review.')." (at 1112).

Credibility/ Inconsistencies, Minor. Minor discrepancy between alien's application and oral testimony regarding the location of a political rally he attended does not go to the heart of his claim. "The salient point for Singh's claim of persecution is that he actually attended a political rally, not its specific location." (at 1113).

***Singh v. INS*, 292 F.3d 1017 (9th Cir. 2002)**; reversing adverse credibility determination and remanding for asylum consideration; McKEOWN; *distinguished by Li v. Ashcroft*, 378 F.3d 959 (9th Cir. 2004).

Credibility/ Airport Interview. Asylum applicant's airport statement lacked sufficient indicia of reliability and accuracy on its own to constitute substantial evidence supporting an adverse credibility determination; applicant did not speak any English upon his arrival in the United States, the translator applicant was provided with during the airport interview did not speak applicant's language, the statement itself provided no information as to how the interview was conducted or the document prepared, and the interview did not afford applicant the sort of opportunity for explanation encompassed in an asylum application.
Credibility/ Articulable Basis. BIA reasons for discounting testimony of asylum applicant regarding two of his arrests in his native country did not create a legitimate basis to constitute substantial evidence supporting an adverse credibility determination.

***Kaur v. INS*, 237 F.3d 1098 (9th Cir. 2001) (*as amended by* 249 F.3d 830 *on denial of reh'g*) (A73-401-474)**; remanding with instructions for the IJ to issue a subpoena requiring INS to produce the resource materials relied on by asylum officer and for a new asylum hearing; THOMPSON.

Evidence/ Subpoena. IJ reviewing denial of asylum application was required, upon request, to issue subpoena directing INS to produce resource materials referred to by asylum officer in referral notice, where asylum officer had used resource materials to dispute applicant's credibility.
Evidence/ Testimony, Declined To Provide; Asylum Application/ Abandonment. Asylum applicants did not abandon their application for asylum and withholding by refusing to testify at asylum hearing after IJ improperly denied their request for subpoena for resource materials referred to by asylum officer in his referral notice, where applicants attended hearing, but declined to testify in absence of opportunity to review evidence essential to their asylum claim.

***Kataria v. INS*, 232 F.3d 1107 (9th Cir. 2000) (A76-847-225)**; granting withholding and remanding for consideration of asylum claim; THOMPSON; *distinguished by Nagoulko v. INS*, 333 F.3d 1012 (9th Cir. 2001).

Credibility/ Corroboration Not Required; Explicit Finding. BIA could not require asylum applicant from India to produce corroborating evidence, where BIA did not make explicit adverse credibility finding, but instead determined that applicant failed to meet his burden of establishing eligibility for asylum because his evidence and testimony raised questions about whether he was a Sikh, whether he lived in Punjab, and whether he was active in All India Sikh Student Federation (AISSF).

Persecution/ Arrests, Detention, Physical Harm. Asylum applicant established that he suffered past persecution on account of political opinion, by testifying that he was arrested on two occasions by Indian police, detained for three days following second arrest, and beaten and subjected to electric shock torture, and that police took such actions because they knew he was member of AISSF and wanted him to cease his AISSF-related activities.

Past Persecution/ Failure to Rebut. Country conditions profile of India for 1996 did not rebut presumption that asylum applicant had well-founded fear of future persecution based on political opinion, arising from his activity in support of AISSF in Punjab; although profile stated that number of arrests and killings had declined significantly since late 1993 and early 1994, it also stated that Indian Human Rights Commission found that authorities continued to commit extrajudicial killings in 1994, and described level of violence in Punjab as only "lower."

***Shah v. INS*, 220 F.3d 1062 (9th Cir. 2000) (A70-945-916)**; granting withholding and remanding for discretionary grant of asylum; (1) discrepancy in death certificate of applicant's husband was not proper basis for adverse credibility finding; (2) determination that applicant's testimony that her husband had been employed full-time for Bharatiya Janata Party (BJP) was inconsistent with passport indicating that he was chartered accountant was not supported by record; (3) State Department Report stating that electoral successes of BJP belied assertion that it was not possible for BJP member to live peaceably in India was not proper basis for adverse credibility finding; (4) applicant's failure to present documents underlying death certificate was not permissible basis for adverse credibility finding; (5) suggestion that letters submitted by applicant were unreliable or forgeries was impermissible basis for adverse credibility finding; (6) conclusion that it was not believable that applicant's husband received from BJP only the few letters that applicant submitted was not proper basis for adverse credibility finding; (7) assertion that applicant "should have been able to present other documentation to support her claims" was not proper basis for adverse credibility finding; (8) applicant suffered past persecution; (9) applicant proved well-founded fear of future persecution; and (10) State Department report was insufficient to rebut presumption that applicant was entitled to withholding of deportation; FERGUSON; *distinguished by* *Chebchoub v. INS*, 257 F.3d 1038 (9th Cir. 2001).

Credibility/ Discrepancy, Spelling or Name; Typographical Error. Discrepancy in death certificate of applicant's husband, consisting of fact that official stamp was marked with date that preceded date listed as date of death, was not proper basis for credibility finding adverse to applicant seeking asylum based in part on husband's murder in India resulting from his political activism; discrepancy was capable of being attributed to typographical or clerical error, applicant was not evasive when asked about discrepancy, and neither IJ nor BIA explained why applicant would lie about date husband was killed.

Credibility/ State Department Reports, Reliance On Rejected. State Department Report stating that electoral successes of Bharatiya Janata Party (BJP) belied assertion that it was not possible for BJP member to live peaceably in India was not proper basis for BIA finding asylum applicant's claim that she faced persecution as BJP member not credible; evidence that individuals could live peacefully in some parts of India had no bearing on applicant's eligibility for asylum, State Department's assertion was speculative, BIA's exclusive reliance on blanket statement constituted failure to make individualized analysis of credibility; no evidence supported BIA's apparent belief that letters, which were purported to be from members of political party, were unreliable or forged, and BIA's belief to contrary was nothing more than subjective view of what letter from party leader to party member would look like.

Credibility/ Corroboration Not Required. Assertion by BIA that asylum applicant "should have been able to present other documentation to support her claims" was not proper basis for finding her not credible, since assertion was based on speculation and conjecture that people who had been members of political party for ten years would have the documentation to prove it, and there was no evidence in record that would indicate that documentation was available to applicant.

Persecution/ Of Family; Threats. Applicant suffered past persecution, as required for asylum eligibility, where she testified credibly that members of predominantly Muslim Congress Party (CP) murdered her husband in India and repeatedly threatened her and her family, all because they were affiliated with predominantly Hindu Bharatiya Janata Party (BJP).

***Sidhu v. INS*, 220 F.3d 1085 (9th Cir. 2000) (A70-636-921)**; remanding with instructions to allow alien to call his father as a witness; (1) alien's varied answers about date of his father's emigration did not support adverse credibility determination; (2) alien may be required to present corroborating evidence in face of adverse credibility determination; but (3) due process required that alien be given second opportunity to establish eligibility for asylum where adverse credibility determination was based, without notice to alien, on alien's failure to produce his father as corroborating witness; HALL; *distinguished by* *Kataria v. INS*, 232 F.3d 1107 (9th Cir. 2000); *Arulampalam v. Ashcroft*, 353 F.3d 679 (9th Cir. 2003); *Shire v. Ashcroft*, 388 F.3d 1288 (9th Cir. 2004).

Credibility/ Discrepancy, Dates. Alien's giving of varying answers regarding his father's date of entry into the United States did not amount to substantial evidence in support of adverse credibility determination, in proceedings on alien's asylum application, absent any indication that alien had incentive to lie about the date, or that date was relevant to alien's claim of persecution, and where alien attempted on several occasions to correct his testimony.

Due Process/ Notice of Adverse Credibility. Due process required that asylum applicant be given second opportunity to prove his eligibility for asylum in hearing before IJ, where applicant received no notice that adverse credibility determination could be based on his failure to call his father as witness at original hearing, and *Mejia-Paiz* decision establishing rules regarding corroboration was not decided until after original hearing.

Maini v. INS, **212 F.3d 1167 (9th Cir. 2000) (A70-945-845)**; reversing and remanding for a discretionary grant of asylum; (1) aliens suffered past persecution by members of Communist Party Marxist (CPM), and (2) fact that CPM was comprised of both Hindus and Sikhs did not preclude finding that it persecuted aliens because of interfaith marriage; FERGUSON.

Persecution/ Threats; Physical Harm; Economic; Of Family. Family of asylum applicants suffered past persecution in India when members of Communist Party Marxist (CPM), which police repeatedly refused to control, repeatedly threatened to kill father and mother, physically attacked son, and forced father to resign from his job, based on fact that mother was Sikh while father was Hindu.

Past Persecution/ Source of Persecution. Fact that CPM in India was comprised of both Hindus and Sikhs did not preclude finding that it persecuted asylum applicants because father was Hindu and mother was Sikh. Any group, even a diverse one, that persecutes people for marrying between races, religions, nationalities, social group memberships, or people of certain political opinion is one that commits persecution on account of a protected ground for purposes of an asylum claim. "In light of our country's shameful history of bigotry, we find it disturbing that the BIA should categorically reject the Mainis' claim of persecution on the ground that the CPM is diverse. The Supreme Court has recognized that there are institutions which can and do tolerate diversity while at the same time opposing intermarriage. In *Bob Jones University v. United States*, 461 U.S. 574, 580, 103 S.Ct. 2017, 76 L.Ed.2d 157 (1983), the court described a university admission policy that permits 'unmarried Negroes to enroll; but a disciplinary rule prohibits interracial dating and marriage.' Indeed, the court condemned this policy as discriminatory, reasoning that '[a]lthough a ban on intermarriage or interracial dating applies to all races, decisions of this court firmly establish that discrimination on the basis of racial affiliation and association is a form of racial discrimination.' *Id.* at 605, 103 S.Ct. 2017 (citations omitted). Thus, it does not follow from the mere fact that a group is diverse that it does not engage in persecution on account of a characteristic shared by some of its members. We hold that any group, even a diverse one, that persecutes people for marrying between races, religions, nationalities, social group memberships, or people of certain political opinion is one that commits persecution on account of a protected ground. In this case, the persecution was on account of religion because the CPM objected to the Mainis' interfaith practices." (at 1175).

Nexus/ Motive Found. Conclusion by BIA that persecution of family of asylum applicants in India by CPM was not on account of religion was not supported by substantial evidence; CPM beat and stabbed son for being half Hindu and half Sikh and told him to become pure Sikh, and father testified that CPM subjected him to death threats because of his interfaith marriage.

Nexus/ Mixed Motive. Fact that one motive of CPM for persecuting asylum applicants in India was economic, as evidenced by applicant's testimony that CPM threatened him both because he had married a Sikh and because they were jealous of his "post, " did not preclude finding that applicants were persecuted on account of religion.

Past Persecution/ Failure to Rebut. Applicants were entitled to withholding of deportation based on persecution by CPM in India because of their interfaith marriage, inasmuch as they showed past persecution threatening their lives or freedom, and INS failed to present any evidence that conditions in India had changed to such extent that it was no longer more likely than not that applicants would face persecution there.

Indonesia

Tampubolon v. Holder, _F.3d_, 2010 WL 774310 (9th Cir. 2010)
Halim v. Holder, _F.3_, 2009 WL 5158237 (9th Cir. 2009)
Benyamin v. Holder, 579 F.3d 970 (9th Cir. 2009)
Wakkary v. Holder, 558 F.3d 1049 (9th Cir. 2009)
Loho v. Mukasey, 531 F.3d 1016 (9th Cir. 2008)
Lolong v. Gonzales, 484 F.3d 1173 (9th Cir. 2007) (en banc)
Sael v. Ashcroft, 386 F.3d 922 (9th Cir. 2004)

> ***Halim v. Holder*, _F.3_, 2009 WL 5158237 (9th Cir. 2009)(A075-745-174)**; affirming the denial of a claim by an Indonesian of Chinese descent who was a practicing Catholic. Although the IJ found him not credible, the court accepted his testimony as true. The incidents which formed the basis of the claim were (1) he had been "stripped naked by students when he was in junior high school"; (2) "in High School, he was spat upon and threatened by Indonesian students, " (3) when ill, he had been refused service on racial grounds by a government clinic; (4) "he was arrested and detained for a couple of days when police stopped the car he was riding in . . . and claimed they found drugs; and (5) he "was beaten by a mob of rioters because he appeared to be Chinese." CALLAHAN.

Persecution/ Cumulative Effect, Insufficient. The circuit found that even when considering all of this in the aggregate, past persecution had not been established. The circuit restated the principle that "persecution is an extreme concept that does not include every sort of treatment that our society regards as offensive, " citing *Wakary v. Holder*, 558 F.3d 1049, 1059 (9th Cir. 2009).

Well-Founded Fear/ Ten Percent Rule; Pattern or Practice; Objective Evidence, Not Reported to Police. The circuit restated the principle that in order to establish a well-founded fear of persecution, the applicant need only demonstrate a ten percent chance of persecution. The circuit found that respondent had not met this threshold, citing to *Lolong v. Gonzales*, 484 F.3d 1173, 1179 (9th Cir. 2007) and *Wakary, supra*, for the finding that Indonesia lacks "institutional

discrimination. The circuit found that "the record does not compel the conclusion that there exists a pattern or practice of persecution against Chinese and Christians in Indonesia." The circuit noted that respondent had been protected by the Indonesian Army at the time he had been caught up in the riots. The circuit also noted that he had not reported any of his problems to the police s, so there was "little to be found" in the record that the government either could not or would not be able to provide him with protection.

Well Founded Fear/ Disfavored Group. "Indonesia's ethnic Chinese minority is a 'disfavored group' on the basis that there is a 'long history of ethnic and religious strife in Indonesia.'" However, "even where an applicant has shown membership in a disfavored group, he or she must still present some evidence of individualized risk." In rejecting this form of relief for respondent, the circuit relief on (1) the relative weakness of the claim of disfavored group; (2) the lack of evidence of approval of the alleged discrimination; and (3) respondent's minimal showing of individualized risk. Respondent "failed to offer any evidence that distinguishes his exposure from those of all other ethnic Chinese Indonesians."

***Loho v. Mukasey*, 531 F.3d 1016 (9th Cir. 2008) (A95-178-821)**; affirming a denial of relief on credibility grounds. The respondent was of Chinese ethnicity and a Christian. She asserted a pattern of physical violence and harassment against her and her family. O'SCANNLAIN.

Well-Founded Fear/ Return Trips; Credibility/ Return Trips. The court noted that the respondent came to the U.S. for periods of two weeks and ten days in 1998 and 2000 and voluntarily returned to Indonesia without making any claim for asylum. With regard to why she had not made a request given that these visits occurred during the period of her claimed persecution, the respondent testified in part that, "she didn't know" about asylum. (at 1017). "[A]n alien's history of willingly returning to his or her home country militates against a finding of past persecution or a well-founded fear of future persecution." (at 1018) (citing to *Kumar v. Gonzales*, 439 F.3d 520, 524 (9th Cir. 2006)). The court extended this principle as a permissible basis to find her incredible.

Persecution/ Definition Of. The court restated the premise that persecution is "an extreme concept that does not include every sort of treatment our society regards as offensive." (at 1017) (citing to *Mansour v. Ashcroft*, 390 F.3d 667, 672 (9th Cir. 2004)).

***Lolong v. Gonzales*, 484 F.3d 1173 (9th Cir. 2007) (*en banc*)**; reversing the panel decision and upholding a denial of relief for a single, ethnic Chinese, Christian woman; The factual basis of the claim was that, "Lolong's father was arrested, detained for weeks at a time, and beaten ... several Indonesian youths attempted to rob Lolong's uncle, but even after discovering that he was not carrying any money they beat him so severely that he required surgery ... [T]he church to which Lolong's parents belong has received bomb threats." (citing panel decision at 400 F.3d at 1223). BYBEE. Dissent by THOMAS.

Board of Immigration Appeals/ Authority to Enter Orders. The court overruled its decisions of *Molina-Camacho v. Ashcroft*, 393 F.3d 937 (9th Cir. 2004), and *Noriega -Lopez v. Ashcroft*, 335 F.3d 874 (9th Cir. 2003), to hold that the Board may enter orders of removal when it reverses decisions by IJs which granted relief. *Id.* at 1177-78.

Persecution/ Generalized Violence. "We have consistently held that a general, undifferentiated claim of the type brought by Lolong does not render an alien eligible for asylum. *See, e.g.*, *Rostomian v. INS*, 210 F.3d 1088, 1089 (9th Cir. 2000) (rejecting asylum claim based on general civil strife); *cf. Martinez-Romero v. INS*, 692 F.2d 595, 595-96 (9th Cir.1982) (noting that granting asylum based on claims of generalized civil strife 'would permit the whole population [of the asylum-seeker's country]' to remain in the United States[;] ... *Gomes v. Gonzales*, 429 F.3d 1264, 1267 (9th Cir.2005) (rejecting a pattern and practice claim because the State Department's Country Reports on Human Rights noted that 'the Bangladesh government did not countenance attacks against Christians and intervened in such attacks to the extent that it was able'); *Mansour v. Ashcroft*, 390 F.3d 667, 673 (9th Cir.2004) (rejecting a pattern and practice claim by a Coptic Christian because the State Department Profile indicated that Egyptian government was not 'unable or unwilling to control' anti-Christian terrorists). *Id.* at 1180. "Lolong has provided nothing that suggests that her fears are distinct from those felt by all other ethnic Chinese Christians in Indonesia." *Id.* at 1181.

Well-Founded Fear/ Individualized Risk. "Although Lolong provided evidence of violence directed at a friend and at members of her family, this evidence does not ... that she is more likely to be targeted for persecution or harassment than any other member of Indonesia's Chinese Christian community." *Id.* at 1180 n.4. "Lolong's failure to allege that she faces an individualized threat distinguishes this case from our prior decisions." *Id.* at 1180 n.5. This is so notwithstanding the "long history of ethnic and religious strife in Indonesia." *Id.* at 1180. The court distinguished the holding in *Sael v. Ashcroft*, 386 F.3d 922 (9th Cir. 2004), in that the applicant in *Sael* "presented some evidence of an individualized threat." *Lolong*, 484 F.3d at 1180 n.5 (citing *Sael*, 386 F.3d at 927-30).

Country Reports/ Appropriate to Rely On. "Where, as here, the petitioner does not allege an individualized risk of persecution but raises only a pattern-or-practice claim, it is entirely appropriate to rely on Country Reports in determining whether such a pattern or practice of persecution exists." *Id.* at 1180 n.5.

***Tampubolon v. Holder*, _F.3d_, 2010 WL 774310 (9th Cir. 2010)(A95-630-032);** reversing a denial of relief to an ethnically Indonesian Christian. There was no issue as to credibility. There was no timely application for asylum. The administrative decision did not consider the request for withholding of removal under the "disfavored group" analysis. The circuit found that "Christians are a disfavored group in Indonesia." There was no claim of past

persecution, and it is not apparent from the circuit's decision that the disfavored group argument had even been presented to the Board, let alone the IJ. The decision does not cite *Halim v. Holder*, 590 F.3d 971 (9th Cir. 2009) where the "disfavored group" analysis was not sufficient to reverse a denial of relief to another Indonesian Christian. PREGERSON.

Protected Grounds/ Disfavored Group. "We must remand . . . to determine whether the combination of disfavored group evidence and individualized risk is sufficient to establish a clear probability that petitioners will be persecuted if removed to Indonesia."

***Benyamin v. Holder*, 579 F.3d 970 (9th Cir. 2009)**; remanding a denial of relief based on one child having had involuntary FGM and the risk of FGM to another daughter. The IJ had found that the procedure was "of a less extreme variety" as practice elsewhere and would not constitute past persecution. The parents were Muslim and Catholic. The wife reported "mistreatment . . . at the hands of his family, alienation and humiliation from friends, societal restrictions on [her] activities, and discrimination on the basis of religion perpetrated by the Indonesian government. . . ." These factors were not considered to constitute persecution and the circuit upheld the denial of claimed persecution on account of mixed religion marriage as a particular social group. McKEOWN.

Persecution/ FGM. The court reversed the determination that the FGM did not constitute past persecution, citing to *Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir. 2005)(en banc). Referring to *Mohamed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005), the court stated "we have no doubt that the range of procedures known collectively as FGM rises to the level of persecution within the meaning of our asylum law." The court further explained, "the BIA also erred in failing to consider whether the threat that [the other daughter] would be forced to undergo FGM could be a ground for relief. . . . Our case law treats claims of past persecution with as much rigor as those base don the threat of future persecution."

Derivative Asylum/ Constructive Deportation. The court states that there is a "unique issue - the effect that the BIA's decision to deny relief to Benyamin will have on his alien minor children. Because a minor alien has no legal right to remain in the U.S., 'deportation of her parents would result in her being constructively deported' . . . . Thus when addressing the parent's application for asylum, it is proper to consider not only the potential persecution the child may face, but also any hardship to the alien child due to the deportation on her parent." (Supporting citations omitted). The court directed the Board on remand to specifically consider the risk to the other daughter.

The court's decision does not mention the Board's previous holding in *Matter of A-K-*, 24 I&N Dec. 275, 279 (BIA 2007), which held that an alien could not be granted relief on the risk of FGM to a minor daughter and that there was not statutory basis for a grant of derivative asylum status to a parent based on the grant of asylum to his child. Despite the absence of reference to A-K-, the court's decision must be seen as having rejected A-K- by noting "the IJ erred in concluding that she could only consider whether Benyamin himself had suffered past persecution or had a well-founded fear of persecution."

Wakkary v. Holder, **558 F.3d 1049 (9th Cir. 2009)(A 96 141 948)**; reversing and remanding a denial of relief. Credibility was not at issue. The respondent was a Pentecostal minister of Chinese ethnicity. He reported incidents of being assaulted, insulted, threatened, and theft of property by native "youths" when he was a child. As an adult, he was further harassed and threatened due to his ethnicity. A good friend who was also a Pentecostal was murdered and his church and minister were subjected to bombing attempts by "native Indonesian extremists . . . on account of their religion." The IJ rejected the asylum claim as untimely because it was filed more than six months after the respondent came out of status. The court upheld the denial of CAT relief. Most significantly, the Court found that the analysis required for considering "disfavored group" claims in the asylum context must be extended to withholding of removal claims notwithstanding the recognition of the difference in burden of proof between asylum and withholding of removal. "The question for the agency on remand will be whether Wakkary has adduced enough evidence of individualized risk, in combination with enough evidence that the ethnic and religious group to which he belongs is disfavored in Indonesia, to make out a clear probability of persecution upon return. BERZON.

Bars to Asylum/ One Year Bar, Not Found. Finding that the respondent was "taking time to gather identity documents and supporting documents he considered vital to his claim, " the Court rejected the administrative rational that the delay could not be excused. The Court found that the general language at 8 C.F.R. § 208.4(a)(5), which sets forth reasons for permitting untimely applications, was sufficiently broad to encompass respondent's reasoning. The Court cited with approval *Husyev v. Mukasey*, 528 F.3d 1172 (9th Cir. 2008) for suggesting that a six month delay would be a "presumptive deadline" that would apply "in the absence of any special considerations."

Persecution/ Discrimination; Of Friends or Affiliates. The Court accepted the administrative determination that there had not been a sufficient showing of past persecution. The Court characterized the initial experiences reported as "instances of discriminatory treatment" as opposed to persecution. The murder of Kalep and the attempted murder of Pastor Munthe, along with the attempted bombings, were not found to be part of a "pattern of persecution closely tied to Wakkary himself, as we have required, " citing *Arriaga-Barrientos v. INS*, 937 F.2d 411, 414 (9th Cir. 1991).

Well-Founded Fear/ Pattern or Practice. There are "two routes by which an asylum seeker can show that the objective risk of future persecution is high enough to merit relief . . . he may show that there is a 'reasonable possibility' that he will be 'singled out individually for persecution'. . . 8 C.F.R. § 1208.13(b)(2)(iii) . . . [or] he may show that there is a systematic 'pattern or practice' of persecution against the group to which he belongs . . . such that even without any evidence of individual targeting, his fear of persecution is deemed reasonable." The Court accepted the administrative determination that the respondent failed to demonstrate that a pattern or practice of persecuting Chinese Christians existed in Indonesia. The Court cited *Bromfield v. Mukasey*, 543 F.3d 1071, 1078 (9th Cir. 2008) (finding a pattern or practice of persecution of gay men in Jamaica); *Knezevic v. Ashcroft*, 367 F.3d 1206 (9th Cir. 2004) (finding that Croats engaged

in a pattern or practice of persecution against Serbs in Bosnia); *Mgoin v. INS*, 184 F.3d 1029 (9th Cir. 1999) (finding a pattern or practice of persecution of Kurdish-Muslim intelligentsia in Armenia). "Although the record contains evidence of widespread anti-Chinese and anti-Christian discrimination that affects a very large number of individuals, and although it is clear that a certain portion of those individuals suffer treatment that rises to the level of persecution, the record does not establish that the situation in Indonesia is similar to the pattern or practices of persecution defined in our prior case law."

Withholding of Removal/ Disfavored Group. The Court reversed the Board's determination that in a withholding case, this form of relief is simply unavailable as a matter of law. In so holding, the court applied *Kotasz v. INS*, 31 F.3d 847 (9th Cir. 1994); *El Himri v. Ashcroft*, 378 F.3d 932, 937 (9th Cir. 2004) (stateless Palestinians); *Hoxha v. Ashcroft*, 319 F.3d 1179, 1182-83 (9th Cir. 2003) (ethnic Albanians in Kosovo); *Singh v. INS*, 94 F.3d 1353, 1359-60 (9th Cir. 1996) (ethnic Indians in Fiji); *Sael v. Ashcroft*, 386 F.3d 922 (9th Cir. 2004) (Chinese Christian women in Indonesia). "An individual seeking asylum must always show that he faces at least a ten percent chance of future persecution, whether he attempts to meet his burden by showing a pattern or practice or by showing a likelihood that he will be singled out." In the face of criticism from other circuits, the holding justifies the Ninth Circuit approach by asserting that "the disfavored group concept simply describes the basic evidentiary proposition that an asylum applicant's membership in a [disfavored group] . . . is relevant evidence in assessing whether his fear of being personally targeted for persecution in the future rises to the requisite level." In other words, the standard for relief, "greater than 50%, " is the same as that for any individual seeking withholding of removal which is recognized as quite a bit higher than the mere 10% degree of risk, but the analysis must proceed in the same manner.

Well-Founded Fear/ Individualized Risk. The court distinguished *Lolong v. Gonzales*, 484 F.3d 1173 (9th Cir. 2007) (en banc), where relief was denied to an Indonesian Chinese Christian woman "because she offered no evidence of her own individualized risk" from *Sael v. Ashcroft*, *supra*, where "Sael met that burden by . . . showing that she personally had been threatened, her home vandalized, and her car thronged by a mob who saw that she was Chinese."

Persecution/ Random Attack. The court reversed the IJ's characterization of the problems as "random" and the IJ's finding that they "had little or nothing to say about Wakkary's chances of future persecution." The court cited *Sinha v. Holder*, 556 F.3d 774 (9th Cir. 2009), as showing that "his harassers were motivated by anti-Chinese and/or anti-Christian sentiment."

CAT/ More Likely Than Not, Not Found. In upholding the denial of relief under CAT, the court explained that "the record contains no evidence whatsoever that Wakkary is likely to be tortured rather than persecuted by government officials or with their acquiescence . . . 8 C.F.R. § 208.18(A)(1)" notwithstanding all of the noted problems experienced by individuals of his group.

***Sael v. Ashcroft*, 386 F.3d 922 (9th Cir. 2004) (A77-256-263)**; remanding for a discretionary grant of asylum because ethnic Chinese are a disfavored group in Indonesia; Alien testified (see 924-27) as to acts of persecution inflicted upon her over a multi-year period,

including: threats from native Indonesians; her car being repeatedly vandalized with sexist and racist words, its tires being slashed and ultimately being destroyed; a group of native Indonesians—shouting her name and saying the neighborhood was not for Chinese—attempted to break into the boarding house where she was living; the police told her not to file a report because an investigation would anger the perpetrators, which would only place her in greater danger. There was no claim of past persecution. The court cited the principle that a successful asylum seeker need only demonstrate a ten percent risk of future persecution. (at 925). B.FLETCHER.

Protected Grounds/ Disfavored Group. Indonesian alien of Chinese ethnicity established a credible fear of being hurt, raped or killed in Indonesia, and she demonstrated that Indonesians of Chinese descent were disfavored group and that she was particularly at risk, based on past threats and acts of violence against her.

Persecution/ Economic. "We recognize that Indonesia's ethnic Chinese minority is often described as economically powerful, but any reasonable factfinder would be compelled to conclude, in light of the record presented to [the IJ] and to the BIA, that the economic success of some ethnic Chinese is used as a convenient, recent justification for an anti-Chinese sentiment that has remained constant even as periods of social and political unrest have alternated with periods of relative calm.... Government efforts to stop this cycle of scapegoating and violence have thus far been ineffective, perhaps because ethnic Chinese are still targets of official discrimination." (at 926).

Iran

Najmabadi v. Holder, _F.3d_, 2010 WL 774252 (9th Cir. 2010)
Taslimi v. Holder, 590 F.3d 981 (9th Cir. 2010)
Cinapian v. Holder, 567 F.3d 1067 (9th Cir. 2009)
Khunaverdiants v. Mukasey, 548 F.3d 760 (9th Cir. 2008)
Hakopian v. Mukasey, 551 F.3d 843 (9th Cir. 2008)
Toufighi v. Mukasey, 510 F.3d 1059 (9th Cir. 2007), *amended*, 538 F.3d 988 (9th Cir. 2008)
Hosseini v. Gonzales, 471 F.3d 953 (9th Cir. 2007)
Nahrvani v. Gonzales, 399 F.3d 1148 (9th Cir. 2005)
Padash v. INS, 358 F.3d 1161 (9th Cir. 2004)
Jahed v. INS, 356 F.3d 991 (9th Cir. 2004)

Bandari v. INS, 227 F.3d 1160 (9th Cir. 2000)
Zahedi v. INS, 222 F.3d 1157 (9th Cir. 2000)

***Najmabadi v. Holder*, _F.3d_, 2010 WL 774252 (9th Cir. 2010)(A72-349-437);** upholding a denial of a motion to reopen in which the movant sought to file an asylum application based on being a "westernized woman" who ha d spent 23 year living in the U.S. and "has the appearance and mannerisms of an Iranian-U.S. citizen." Her first claim was filed in April 2000, when she stated that "there wasn't any particular reason" that she had left Iran but rather "everything changed especially for a woman like me . . . due to its then war with Iraq." She testified that she is not sure if she can live there, and after 16 years knows the U.S. "now probably more than her country." There had been no claim of past persecution. The circuit upheld the Board's denial of her claim in an unpublished decision: "Relying on Fisher v. INS, 79 F.3d 955, 962-63 (9th Cir. 1996) (en banc) we rejected [her] claim that she had a well-founded fear of future persecution based on her refusal to conform to the social norms of Iran." Respondent based her motion to reopen on "changed circumstances in Iran." She cited the terrorist attacks of September 11, 2001 and Iranian ties to "terrorists, " as well as reduced human rights. There was no assertion that anyone in Iran had now developed a particular interest in harming this respondent. Rather, she was concerned that the Iranian government would perceive her as pro-U.S. and pro-Western, and she does not agree with how the government treats their women and people in general. She stated that she will be active in trying to change Iran and the situation for women. SMITH; dissent by PREGERSON.

Motion to Reopen/ Changed Circumstances. In upholding the denial, the court characterizes respondent's evidence as pertaining to "generalized conditions in Iran" that fail to demonstrate "that her predicament is appreciably different from the dangers faced by her fellow citizens. Citing *Singh v. INS*, 134 F.3d 962, 967 (9th Cir. 1998).

Motion to Reopen/ Changed Circumstances, Personal. "We have recognized the perverse incentive that would result from granting an applicant reopening based on a self-induced change in personal circumstances; here, [her] desire to become politically active, following her previous testimony to the contrary. *See He v. Gonzales*, 501 F.3d 1128, 1132 (9th Cir. 2007); *Larngar v. Holder*, 562 F.3d 71, 76-77 (1st Cir. 2009).

Well-Founded Fear/ Fear As Alien Removed From U.S. "We have previously rejected an asylum claim based on the hatred of Iranians for Americans, noting that this type of claim cannot possibly justify asylum, because it would mean that every citizen of a country unfriendly to the U.S. would be entitled to asylum." *See Kaveh-Haghigy v. INS*, 783 F.2d 1321, 1323 (9th Cir. 1986).

Protected Grounds/ Disfavored Group. The proposed group would be: westernized women forcibly removed from the U.S. to Iran. Citing to *Wakkary v. Holder*, 558 F.3d 1049, 1066 (9th Cir. 2009) (a general undifferentiated claim based solely on the threat to the group as a whole is not sufficient for an individualized petitioner to establish the requisite likelihood of persecution under the "singled out individually" rubric), the court notes that Respondent has pointed to no evidence of an individualized threat to persecute her.

***Toufighi v. Mukasey*, 510 F.3d 1059 (9th Cir. 2007), *amended*, 538 F.3d 988 (9th Cir. 2008) (A76-382-466)**; upholding a denial of a motion to reopen. The respondent had been denied asylum. He sought to have is case reopened on the bases that he had married a U.S. citizen and there were "changed circumstances." The IJ "found that Toufighi has not in fact converted to Christianity" because he could not give accurate information about his religion and the claim was a "ruse." (at 1060). "The changed circumstances to which Toufighi referred did not address religion...but sought to show that since the latest Iraq war, Iran had been persecuting proponents of liberal pro-Western or pro-American ideologies..." (at 1062, n.5) The respondent made an untimely request to reopen and had not departed in the time frame authorized by the IJ. The motion was denied on those bases. SINGLETON. There was a dissent by BERZON.

Motion to Reopen/ Changed Circumstances. "[T]he Board rejected the motion to reopen based on changed circumstances in Iran because it was not supported by evidence that Toufighi would be directly affected by the alleged changes." (at 1062). In upholding that decision: "We find that the IJ did reject Toufighi's assertion of conversion, and that we now lack jurisdiction to review the IJ's original determination because Toufighi's opportunity to appeal that determination lapsed ninety days after the Board's Order" dismissing the appeal. (at 1064).

Protected Grounds/ Particular Social Group, Not Found. "We have never recognized pro-Western as a social group protected against persecution, and agree with the Seventh Circuit that such a proposition is debatable at best. *Sharif v. INS*, 87 F.3d 932, 936 (7th Cir. 1996); *see also Fisher v. INS*,79 F.3d 955 (9th Cir. 1996)(en banc)." (at 1067) (internal quotation marks omitted).

***Nahrvani v. Gonzales*, 399 F.3d 1148 (9th Cir. 2005) (A75-654-655)**; *See* **Germany** (Iranian who fled persecution in Iran was granted asylum in Germany and was firmly resettled. Alien did establish past persecution in Iran so as to justify withholding of removal to that country).

***Padash v. INS*, 358 F.3d 1161 (9th Cir. 2004) (A73-396-582)**; *See* **India** (Indian Muslim failed to establish that the Iranian military sought to recruit or harm him on account of a protected ground).

Taslimi v. Holder, **590 F.3d 981 (9th Cir. 2010)**; reversing a denial of asylum based on a finding that the application had not been timely filed. Credibility was not at issue. Respondent was granted withholding of removal and protection under CAT. Respondent further took issue with the entry of an order of removal. Respondent entered the U.S. in October 1992. She "converted to Christianity" in September 2002 and "learned of asylum in March or April of 2003." She filed her application on April 2, 2003. PREGERSON.

Bars to Asylum/ One Year Bar, Not Found. Respondent "did not apply for asylum immediately after her decision because she wanted to be sure it would be a life-long decision." "The IJ reasoned that [respondent] had lived in the US since 1992 and had 'ample opportunity to avail herself of resources regarding the laws of asylum.'" The circuit found that this analysis "misses the mark." In the circuit's view, to enforce the one year bar would have placed respondent in an "untenable position" in that she wanted to be sure of the "sincerity of her faith" before making the application."

Withholding of Removal/ Order of Removal. "When an IJ decides to grant withholding of removal, an explicit order of removal must be included int eh decision. . . . In instances in which an IJ grants both asylum and withholding of removal, an order of removal would not normally be required, as an asylum grant does not require an order of removal.

Cinapian v. Holder, **567 F.3d 1067 (9th Cir. 2009)**(A75 678 173); remanding a denial of relief to a family who were ethnic Armenians and Christians. The adult parents had "discussed the tenets of the Christian faith with a 13 year old Muslim boy." In an incident in 1999, local police "broke down Petitioners' door and beat and arrested" the parents. The IJ found the respondents not to be credible. This assessment was based "in large part because of 'major inconsistencies and problems' related to 'where they are from' which the IJ concluded 'went to the heart of the claim.'" HAWKINS

Due Process/ Right to Confrontation; **Credibility/ Documents to Impeach, Rejected; Evidence/Hearsay, Cannot Rely On**. The Government provided forensic reports, which stated that a birth certificate was "counterfeit" and that documents offered to prove the bona fides of the Christian faith had been produced from a master copy by a color copier, to the respondents for the first time at the individual calendar hearing. The respondents asserted they had no knowledge of their documents being false. The Court cited *Cunanan v. INS*, 856 F.2d 1373, 1375 (9th Cir. 1988), *Saidane v. INS*, 129 F.3d 1063, 1066 (9th Cir. 1997), and *Baliza v. INS*, 709 F.2d 1231, 1234 (9th Cir. 1983), for the "importance of the right to confront evidence and cross-

examine witnesses in immigration cases." The court found "prejudice" and would not permit the adverse credibility finding to stand.

***Khunaverdiants v. Mukasey*, 548 F.3d 760 (9th Cir. 2008)**(A97-531-856); reversing a denial of asylum on the basis of failure to show that the application had been timely filed. The respondent had been granted withholding of removal. SEDGWICK

Bars to Asylum/ One Year Bar, Not Found. Respondent had given conflicting information as to just when he had entered the United States. He did not have any corroborative evidence. The court restated its case law that in its view gave it jurisdiction to hear challenges to denials of asylum based on findings of untimely applications. The court distinguished *Sillah v. Mukasey*, 519 F.3d 1042 (9th Cir. 2008),where the court upheld the denial of asylum based on untimely filing, by noting that the statute does not "require an alien to establish by clear and convincing evidence his or her exact arrival date." The court found that because the applicant could not have been shown to have falsely testified regarding the events giving rise to his claim which happened in Iran within one year of his actual filing of the application, it simply could not have been found to have been untimely.

***Hakopian v. Mukasey*, 551 F.3d 843 (9th Cir. 2008)**(no A number provided); rejecting an administrative finding of an untimely filed I-589. The application would have been timely, if the respondent had indeed entered this country on the date claimed. BEA.

Bars to Asylum/ One Year Bar, Not Found. the NTA charged the date of entry as apparently set forth on the I-589. The Respondent admitted the same. The application was found untimely in that no documentation or supportive material was offered by the Respondent to support the asserted date of entry. The Court held that the admission of the charge in the NTA constituted a "judicial admission of the date of entry" and could not be questioned by the absence of any supportive or corroborative material.

***Hosseini v. Gonzales*, 471 F.3d 953 (9th Cir. 2007) (A73-985-544)**; denying the respondent's applications for relief, including adjustment of status, on the bases of "terrorist connected activities and his fraud." The court, CANBY, upheld the administrative denials of asylum and adjustment of status, granted deferral of removal under CAT. The respondent denied supporting an officially designated terrorist group. The withholding of deportation denial was reversed and remanded.

Discretion/ Administrative Exercise Of, Upheld. "In light of the uncontested evidence that Hosseini perpetrated fraud throughout his immigration proceedings, the BIA's discretionary denial" was accepted.

Withholding of Deportation/ Terrorist Bar. The administrative finding that "he is a danger to the security of the U.S." was not accepted. The court cited *Cheema v. Ashcroft*, 383 F.3d 848 (9th Cir. 2004), for the holding: "it is impermissible to find that an alien is a danger to the security of the U.S. solely because he engaged in terrorist activity . . . . [T]here must be a finding supported by substantial evidence that links the terrorist activity with one of the criteria relating to our national security."

CAT/ Bars to Withholding. The court held that *Cheema* did not apply to withholding under the CAT." The court accepted the administrative findings that the respondent was involved in fundraising and recruiting "for a designated terrorist organization." The evidence adduced was found to be "minimal, " but it did not "compel a contrary result."

CAT/ Deferral of Removal. The court reversed the administrative finding that the respondent had failed to meet his burden of proof. In doing so, the court once again relied on general documentary evidence (*see Al Harbi v. INS*, 242 F.3d 882 (9th Cir. 2001); *Kamalthas v. INS*, 251 F.3d 1279 (9th Cir. 2001)), notwithstanding its explicit and repeated agreement that the respondent admitted to falsifying documents and making fraudulent statements to immigration officials at nearly every stage of his proceedings."

***Jahed v. INS*, 356 F.3d 991 (9th Cir. 2004) (A70-085-247)**; remanding for a discretionary grant of asylum; TROTT; (KOZINSKI, dissenting, urges greater deference to the BIA: "Maybe there's something in the water out here, but our court seems bent on denying the BIA the deference a reviewing court owes an administrative agency.")

Nexus/ Mixed Motive. BIA should not have ignored or discounted political context of Iranian soldier's prior threats toward alien, in allegedly warning alien that he would report him for associating with rival political group persecuted by Iran's current government, simply because soldier, in suggesting that alien could purchase his silence by paying him large sums of money, had been motivated by his personal desire for financial gain; alien's evidence, viewed in its totality, clearly established causal connection between persecution, fear of future persecution, and alien's political opinion.

Well-Founded Fear/ Continued Family Presence. Mere fact that relative of alien who remained behind in Iran had not been "set upon" by officials in Iranian government was manifestly irrelevant to whether alien had established a well-founded fear of persecution.

***Bandari v. INS*, 227 F.3d 1160 (9th Cir. 2000) (A73-971-151)**; granting withholding and remanding for a discretionary grant of asylum; FERGUSON.

Credibility/ Inconsistencies, Minor. Inconsistency between written statement that alien was sentenced to 75 lashes for interfaith dating, and his testimony that he was whipped 75 times on day police caught him with woman of another faith, was not permissible basis for adverse credibility finding; discrepancy concerned one among many attacks inflicted over several days, and there was no indication in record as to why applicant would lie about when police whipped him. Discrepancy between direct testimony and cross-examination as to whether

beatings occurred in the street or at the police station was an impermissible basis for finding the alien not credible. Nor could the IJ discredit alien's testimony because of the IJ's belief that he should have bled as a result of such beatings.
Nexus/ Mixed Motive; Neutral Law. While the police may have initially stopped alien to enforce a neutral law against embracing, the police beat, tortured, detained, and sentenced alien for interfaith dating, saying he was a "dirty Armenian" who had no right to be with a Muslim woman, and that this constitutes persecution. (at 1168).

***Zahedi v. INS*, 222 F.3d 1157 (9th Cir. 2000) (A73-446-640)**; granting withholding and remanding for a discretionary grant of asylum; B.FLETCHER.

Burden of Proof. Rejection of documentary evidence must be based on specific, cogent reasons that bear a legitimate nexus to the rejection. (at 1165).
Well-Founded Fear/ Objectively Reasonable, Found. Documentary evidence, consisting of summons for alien to appear in court for interrogation, notice declaring time for applicant to appear in court to answer allegations of reproduction of banned novel, letter to Islamic Revolutionary Court stating that applicant had been active in distributing novel, and death certificate of novel's translator, along with background evidence submitted by applicant, made out objective component of a well-founded fear of future persecution.

Iraq

Malkandi v. Mukasey, 544 F.3d 1029 (9th Cir. 2008)
Mousa v. Mukasey, 530 F.3d 1025 (9th Cir. 2008)
Hanna v. Keisler, 506 F.3d 933(9th Cir. 2007)
Gulla v. Gonzales, 498 F.3d 911 (9th Cir. 2007)
Al-Saher v. INS, 268 F.3d 1143 (9th Cir. 2001)
Al-Harbi v. INS, 242 F.3d 882 (9th Cir. 2001)

***Malkandi v. Mukasey*, 544 F.3d 1029 (9th Cir. 2008) (A 75 043 854)**; affirming a denial of relief. Respondent was charged with being removable because there were reasonable grounds to believe that he would be a "danger to national security." He was characterized as a "'travel facilitator' for a notorious Al Qaeda operative whom the intelligence establishment believes was involved in several of Al Qaeda's most infamous attacks against the U.S." Respondent had been interviewed by an FBI agent in a national security investigation and conceded having concocted a false story so as to obtain the refugee status that brought him and his family to the U.S. MCKEOWN.

Bars to Asylum/ Terrorist Bar. The court expressed its agreement with *Yusupov v. Ashcroft*, 518 F.3d 185, 200 (3rd Cir. 2008) which disapproved of the standard set forth by the Atty. Gen. In *Matter of A-H-*, 23 I&N Dec. 774, 789 (AG 2005) so that "the alien must actually 'pose a serious danger' to U.S. security" as contrasted to the view of the AG: "if there is information that would permit a reasonable person to believe that the alien *may* pose a danger to the national security." (Emphasis in original). In upholding the adverse credibility determination the court applied the terms of the REAL ID ACT in terms of the broad amount of evidence that may be considered and found there to be "substantial evidence" to justify the finding. This included reliance on general documentary materials such as the 9/11 report. The court equated the government's burden in establishing this so that an individual would not be eligible for any relief under asylum, withholding of removal, or under either form of CAT as "akin to probable cause for believing that Malkandi posed a danger to the U.S."

CAT/ Deferral of Removal. Respondent "was found to be ineligible because he posed a threat to national security." In other words, "under the national security bar to withholding of removal and deferral of removal under CAT, Malkindi needed to prove by a preponderance of the evidence that such grounds do not apply, 8 CFR § 1208.16(d)(2), which he failed to do."

***Mousa v. Mukasey*, 530 F.3d 1025 (9th Cir. 2008) (A78-542-049)**; reversing and remanding a denial of a Chaldean Christian on credibility grounds as well as the alternative holding on changed country conditions. PREGERSON.

Credibility/ Shame. "The IJ could not reconcile Mousa's years of resistance to joining the Baath Party with the Baath Party reputation for ruthless recruitment tactics." (at 1027). In rejecting this position, the court stated: "We have previously held, however, that a petitioner's ability to withstand severe persecution does not make it more likely that such persecution occurred." *Id.* (Citing to *Gui v. INS*, 280 F.3d 1217, 1226-27 (9th Cir. 2002)). "We also reject the IJ's and the BIA's primary reason for finding Mousa incredible: Mousa's failure to mention her rape" at any time prior to the hearing before the IJ. *Id*. The court cited to *Paramasamy v. Ashcroft*, 295 F.3d 1047, 1052-53 (9th Cir. 2002) for the proposition that her prior unwillingness to disclose this was justified by "her cultural reluctance to admit the fact that it occurred." (at 1028).With regard to the concern over whether there was an adequate explanation over a "leg infection, " the court

quoted *Bandari v. INS*, 227 F.3d 1160, 1167 (9th Cir. 2000): "[T]he mere omission of details is insufficient to uphold an adverse credibility determination." (at 1029).

Past Persecution/ Changed Conditions Not Found; Failure to Rebut. There was an alternative finding by the IJ that even if past persecution had been established, "the fall of Saddam Hussein and the Baath Party" justified a denial. (at 1029). The court cited to *Hanna v. Keisler*, 506 F.3d 933, 938 (9th Cir. 2007) as to the risk that one would fear persecution "from others in a post-Saddam Hussein Iraq." (at 1030).

***Hanna v. Keisler*, 506 F.3d 933 (9th Cir. 2007)**; reversing and remanding a denial based on changed country conditions and inadequate consideration of an alternative request for "humanitarian asylum." The BIA found past persecution based on events that occurred during the regime of Saddam Hussein, which has since been overthrown. PREGERSON.

Past Persecution/ Changed Conditions Not Found; Failure to Rebut. "The government did not make any showing regarding whether Hanna would likely fear religious persecution from others in post Saddam Hussein Iraq." (at 938).

Past Persecution/ Humanitarian Asylum, Standard. "The BIA may grant humanitarian asylum to a victim of past persecution, even when the government has rebutted the applicant's fear of future persecution, if the applicant establishes one of two things. First, the asylum seeker can show 'compelling reasons for being willing or unable to return to the country that he fled arising out of the severity of the past persecution.' 8 C.F.R. 1208.13(b)(1)(iii)(A). Or, under the second prong of the humanitarian asylum analysis the asylum seeker can show a 'reasonable possibility that he or she may suffer other serious harm upon removal to that country.' 8 C.F.R. § 1208.13(b)(1)(iii)(B); *see also Belishta v. Ashcroft*, 378 F.3d 1078, 1081 (9th Cir. 2004)." (at 939).

***Gulla v. Gonzales*, 498 F.3d 911 (9th Cir. 2007) (Real ID Act)**; reversing and remanding a discretionary denial of asylum to a Catholic, ethnic Chaldean citizen of Iraq; The respondent reported various problems that he and his family had experienced under the government of Saddam Hussein. Respondent paid a smuggler to obtain false travel papers so as to be able to emigrate to Turkey. He then traveled to Greece and Mexico before coming to the United States. The IJ denied asylum in the exercise of discretion but granted withholding of removal to Iraq upon the finding of past persecution; PREGERSON.

Discretion/ Administrative Exercise Of, Not Upheld. The court commented that "it is rare" to deny asylum in the exercise of discretion – pointing to the only case where it had been upheld, *Alsagladi v. Gonzales*, 450 F.3d 700 (7th Cir. 2006). (at 916). The reliance by the IJ upon use of fraudulent documents, the payment of significant sums of money to smugglers, the presence in three countries before coming to the U.S. where claims for asylum could have been made were all found to be insufficient bases to deny the claim.

Dissent by FERNANDEZ. Judge Fernandez stated that the decision was another example of the court "picking apart the opinions of the agency, " and noted that "Congress expressed its

disdain for that approach when it amended the Immigration and Nationality Act to blunt some of the more obvious maneuvers . . . ." (at 920). (Fernandez, J., dissenting).

***Al-Saher v. INS*, 268 F.3d 1143 (9th Cir. 2001) (*as amended by* 355 F.3d 1140 (9th Cir. 2004)) (A77-107-207)**; remanding for a grant of CAT withholding; HUG; *distinguished by* *Ndom v. Ashcroft*, 384 F.3d 743 (9th Cir. 2004).

Persecution/ Arrests. Although alien had been arrested three times in Iraq, his first was based on his misrepresentation of his religion to the military, his second involved a security concern, and treatment of alien following his third arrest did not demonstrate persecution.
CAT/ Torture, Found. Alien was subjected to sustained beatings for a month following his arrest, was beaten severely and burned with cigarettes over an eight-to-ten day period following his second arrest, and had managed to escape and avoid further beatings following his third arrest, which was based on his imputed political opinion.

***Al-Harbi v. INS*, 242 F.3d 882 (9th Cir. 2001) (A76-200-283)**; granting withholding and remanding for discretionary grant of asylum on the basis of documentary evidence alone as to the objective component of the claim, even with an adverse credibility finding being upheld in terms of specified acts; Alien did not suffer persecution based on alleged interrogation and beating that occurred when he rejoined military pursuant to grant of amnesty to deserters, inasmuch as there was no evidence that interrogation and beating took place other than applicant's testimony and his application for asylum, and his testimony failed to establish link between alleged interrogation and beating and his actual or imputed political opinion. BERZON.

Credibility/ Propensity for Dishonesty. Alien's propensity to change his story regarding incidents of past persecution justified an adverse credibility determination against his testimony.
Evidence/ Testimony in Light Of Adverse Credibility. "In light of the adverse credibility finding, we consider Petitioner's testimony on this issue only to point the way to areas of inquiry, and look for support only to the documentary material in the record." (at 891).
Well-Founded Fear/ Objectively Reasonable, Found. Alien established a well-founded fear of future persecution on account of imputed political opinion, based on his evacuation to U.S. territory by U.S. agencies, even though his testimony was not credible, inasmuch as documentary evidence indicated that all individuals who were evacuated to Guam at same times as applicant genuinely entertained subjective fear of persecution, and that such fear had objective basis in that he would be associated by Iraqi regime with American airlift and assumed to be dissident, and likely would be persecuted.

Israel

Baballah v. Ashcroft, 367 F.3d 1067 (9th Cir. 2004)
Khourassany v. INS, 208 F.3d 1096 (9th Cir. 2000)

***Khourassany v. INS*, 208 F.3d 1096 (9th Cir. 2000) (A74-433-346)**; upholding denial of asylum, withholding, and voluntary departure; petition denied; THOMAS; *distinguished by* *Baballah v. Ashcroft*, 367 F.3d 1067 (9th Cir. 2004).

Persecution/ Harassment; Not Rising to Level Of. Israeli citizen of Palestinian ancestry and of the Muslim faith's detention and questioning by the Shabak and local police may have constituted harassment but didn't rise to the level of persecution; he was detained and questioned by the Israeli police for only short periods of time, was never jailed or charged with any crime, and was never handcuffed, beaten or threatened injury by the Shabak.
Well-Founded Fear/ Individualized Risk. "[Alien's] contention that conditions in Israel are otherwise 'extremely volatile' and that the Israeli government and other radical groups have used 'brutal and torturous' tactics against Palestinians is simply too generalized to show that he is at 'particular risk' of persecution." (at 1101).
Voluntary Departure/ Good Moral Character. Alien's admission that he paid a smuggler to bring his wife and child into the U.S. illegally precluded him from meeting the good moral character component for voluntary departure.

***Baballah v. Ashcroft*, 367 F.3d 1067 (9th Cir. 2004) (*amending* 336 F.3d 995 (9th Cir. 2003) *on denial of reh'g*) (A72-095-684)**; granting withholding and remanding for a discretionary grant of asylum to Israeli citizen of Palestinian ethnicity who was Muslim; PAEZ.

Persecution/ Cumulative Effect; Physical Harm Not Necessary. Repeated attacks by Israeli Marines over a ten year period, which included endangering his crew by causing his boat to fill with water, shooting bullets over the boat, spraying highly pressurized water at boat's

occupants in freezing temperatures, and destroying his fishing nets, constituted persecution by the government, even without physical harm.

Persecution/ Economic. Purely economic harm can rise to the level to constitute persecution where there is a probability of deliberate imposition of substantial economic disadvantage based on one of the protected grounds. This need not be to the extent that the applicant simply could not support his family. To determine if past persecution has been established, all acts must be considered in the aggregate, even though single acts by themselves would not be found to constitute such.

Nexus/ Motive Found; Protected Grounds/ Religion; Ethnicity. Both alien's belief and the use of the derogatory slur "goy" (non-Jew), demonstrate that the Israeli Marines were motivated at least in part by alien's ethnicity and religion.

Unable or Unwilling to Control/ Reporting Not Required. Alien was not required to report the persecution he suffered to the police because the persecutors "were themselves government actors, conclusively establishing the third prong of the analysis by showing government involvement." (at 1078).

Jamaica

Bromfield v. Mukasey, 543 F.3d 1071 (9th Cir. 2008)

***Bromfield v. Mukasey*, 543 F.3d 1071 (9th Cir. 2008) (A 44 134 417)**; reversing a denial of relief to an aggravated felon. The basis of the claim was that the respondent "came out" as a gay man after he had come to the United States. He did not claim any prior persecution.

Notwithstanding his return to Jamaica and having an amicable relationship with his father, the court found that the Department of State country report "compels the conclusion that the Jamaican government. . . Acquiesces in the torture of gay men. . . ." The relief requested was withholding of removal and protection under CAT. FLETCHER.

Protected Grounds/ Particular Social Group, Found; PSG/Homosexuals. The court cited *Karouni v. Gonzales*, 399 F.3d 1163, 1172 (9th Cir. 2005) as holding that "homosexuals are members of a particular social group." The court found that a Jamaican law which criminalizes homosexual activity constitutes "persecution" as opposed to "legitimate criminal prosecution" because it is "motivated by a protected ground, " i.e. being gay. The court also found that "there exists a pattern or practice of persecution of gay men."

CAT/ Acquiescence. The court found that the "acquiescence" requirement under 8 CFR § 1208.18(a)(1) "requires only that public officials were aware of the torture 'but remained willfully blind to it, or simply stood by because of their inability or unwillingness to oppose it, " citing *Ornelas-Chavez v. Gonzales*, 458 F.3d 1052, 1060 (9th Cir. 2006).

Kazakhstan

Parussimova v. Mukasey, 555 F.3d 734 (9th Cir. 2009)

***Parussimova v. Mukasey*, 555 F.3d 734 (9th Cir. 2009) (*amended opinion issued, denying motion for rehearing*) (A98-822-251);** affirming a denial of relief to an ethnic Russian woman who experienced a "harsh" life. (at *1). She had been "permanently affected" by her experiences and "discrimination." *Id.* A family member had been killed because of his ethnicity. The respondent had been violently assaulted and almost raped, lost consciousness, all while being told that she was a "Russian pig[]" and "we had to get out of their country." *Id.* When she unsuccessfully sought police assistance, she was subjected to additional threats. She was found to be credible. The issue was presented as to whether under the REAL ID Act, the mistreatment was "on account of" a protected criteria. O'SCANNLAIN.

Nexus/ Post REAL ID, Central Reason. The court reviewed its pre-REAL ID Act case law such as *Briones v. INS*, 175 F.3d 727 (9th Cir. 1999) and *Borja v. INS*, 175 F.3d 732 (9th Cir. 1999) and

found that such had been superceded by the REAL ID Act's requirement that the protected criteria be "at least one central reason" for the persecution. (at *4). The court held that this requirement did not mean that the successful application must demonstrate that "such reason account for 51% of the persecutor's motivation." *Id.* Rather, it must be shown that such would have been "primary, essential, or principal, " which is significantly high than the prior 9th Circuit standard of it being "a mere part." *Id.* "A motive is central if that motive standing alone would have led the persecutor to harm the applicant." The court then cited approvingly *Matter of J-B-N & S-M*, 24 I&N Dec. 208, 214 (BIA 2007).

Nexus/ Mixed Motive; Protected Grounds/ Ethnicity. The court found there to be "at least three possible reasons for attacking her." (at *5). It found that only her ethnicity would be a possible basis for relief. The other factors included: her public association with an American company, "her vulnerability as a young woman walking alone to sexual assault, " and her unsuccessful attempt to obtain police protection. *Id.* Although the assailants were aware of her ethnicity and used it as a means to degrade her, there was not found to be a causal connection between the characteristic and the violence that followed.

Kenya

Owino v. Holder, 572 F.3d 780 (9th Cir. 2009)
Li v. Keisler, 505 F.3d 913 (9th Cir. 2007)
Njuguna v. Ashcroft, 374 F.3d 765 (9th Cir. 2004)

Owino v. Holder, **575 F.3d 956 (9th Cir. 2009)**; remanding a denial of relief for failure to apply the standards of the REAL ID Act which governed this application. PER CURIAM.

Credibility - Post-REAL ID Act/ REAL ID Standard. "Even assuming credibility, the act permits an IJ to 'determine what the applicant should provide evidence which corroborates otherwise credible testimony.'" The court recognized this as a departure from pre-REAL ID Act case law.

Li v. Keisler, **505 F.3d 913 (9th Cir. 2007)**; considering the standards to be applied with regard to EAJA fees in cases where the government had sought a voluntary remand, prior to oral argument, with regard to petitions for review filed by aliens seeking judicial review of adverse administrative decisions. One of the cases involved a claim from a woman who feared FGM if she had to return to Kenya; PER CURIAM.

EAJA Fees. The administrative position which had denied relief was found to have violated "clearly established law" and hence justified the request for EAJA fees. It is important to note that the administrative decision was prior to Ninth Circuit case law directly on point.

Njuguna v. Ashcroft, **374 F.3d 765 (9th Cir. 2004) (A75-507-068)**; vacating denial of withholding and asylum, granting withholding, and remanding for a favorable discretionary grant of asylum; HUG.

Well-Founded Fear/ Objectively Reasonable, Found. Kenyan established a well-founded fear of persecution based on his acts in opposition to alleged corruption in Kenya's current regime, in assisting Kenyan women who had allegedly been sold into de facto slavery to the Saudi royal family to escape from their alleged captors while present in the United States, based upon evidence of threats which were made against alien by Kenyan officials after he had provided this assistance, and based on evidence of the imprisonment, attacks on, and threats against members of alien's family still present in Kenya, some of which attacks were accompanied by specific threats against alien. There was no physical violence to the alien, nor was there a claim of past persecution.
Credibility/ Corroboration Provided. "The finder of fact may not circumvent a credibility finding by labeling compelling circumstantial evidence 'speculative.'" (at 771).
Well-Founded Fear/ Ten Percent Rule. A one in ten chance is sufficient to establish a well-founded fear.
Nexus/ Retribution, On Account of Protected Ground. Retaliation against an alien or members of her family who advocated against government corruption can be "on account of" political opinion.
Asylum Application/ Granted to Family Member. The fact that other family members had their cases granted was relevant in that "similarly situated individuals [should] be treated similarly." (at 771, n. 4).

Kuwait

El Himri v. Ashcroft, 378 F.3d 932 (9th Cir. 2004)

> ***El Himri v. Ashcroft*, 378 F.3d 932 (9th Cir. 2004) (A76-642-062)**; reversing IJ's denial of asylum and withholding and upholding denial of CAT; Jordan was improperly designated as a country of removal; petition granted and reversed; HUG.

Well-Founded Fear/ Pattern or Practice. Stateless Palestinian established an objectively reasonable fear of future persecution based on his minority status; Kuwait had engaged in forced expulsions, extreme persecution, and discrimination of Palestinians, Palestinians who remained in Kuwait were denied right to work, go to school, or obtain drinking water, and Palestinians had heightened risk of abuse by police.

Well-Founded Fear/ Individualized Risk. "[Aliens'] membership in [Palestinian] minority makes it more likely than not that, if they returned to Kuwait they would suffer the same economic discrimination that has made life in Kuwait virtually impossible for their fellow Palestinians. [Aliens'] burden to show a personalized risk of persecution is relatively low because Kuwait's policy of discriminating against its entire Palestinian population is well-established." (at 937). They did not establish past persecution. (at 936). This decision is an extension of *Baballah v. Ashcroft*, 367 F.3d 1067 (9th Cir. 2004), in which the applicant was a Palestinian who was a citizen of Israel.

Country of Removal/ Acceptance of Alien. "[A]t the time the government proposes a country of removal pursuant to [INA § 241(b)(2)(E)(vii)], the government must be able to show that the proposed country *will* accept the alien." (at 939). This is so, even when the aliens "hold Jordanian travel documents." (at 934).

Laos

Siong v. INS, 376 F.3d 1030 (9th Cir. 2004)
Vongsakdy v. INS, 171 F.3d 1203 (9th Cir. 1999)
Vang v. INS, 146 F.3d 1114 (9th Cir. 1998)
Yang v. INS, 79 F.3d 932 (9th Cir. 1996)

***Vang v. INS*, 146 F.3d 1114 (9th Cir. 1998) (A71-950-994);** upholding denial of asylum based on firm resettlement in France; upholding denial of withholding; petition denied; D.W. NELSON; *distinguished by Camposeco-Montejo v. Ashcroft*, 384 F.3d 814 (9th Cir. 2004).

Bars to Asylum/ Firm Resettlement, Found. Laotian nationals were firmly resettled in France prior to entering the United States, and their minor child thus was ineligible for asylum, notwithstanding that France could forbid his return because his French travel document expired after he entered the United States. Alien never became a national or citizen of France.
Withholding of Deportation/ Denied. Alien born in refugee camp in Thailand to Laotian Hmong parents, who was subject to deportation to Thailand, France, or Laos in that order, was not entitled to withholding of deportation on ground that he would face persecution as enemy of Laotian government if returned to Laos; alien failed to show that France would refuse to accept him or that Thailand would forcefully repatriate him, and none of his family had been in Laos in nearly 20 years. This is so, even with alien's father having "fought in the CIA's secret army against the Laotian communists." (at 1115).

***Yang v. INS*, 79 F.3d 932 (9th Cir. 1996)**; *See* **France** (upholding denial of asylum based on firm resettlement in France after determining that 8 C.F.R. § 208.14(c)(2) effectively harmonizes sections 207 and 208 by closing a loophole incentive to illegal immigration).

***Siong v. INS*, 376 F.3d 1030 (9th Cir. 2004)**; *See* **France** (death threats and attacks in France on Laotians who fought against the communists).

***Vongsakdy v. INS*, 171 F.3d 1203 (9th Cir. 1999) (A72-113-210)**; reversing BIA's denial of withholding and finding alien eligible for asylum; remanded; A Laotian citizen who supported the monarchy was imprisoned by the communist government in a labor camp. He was physically and verbally abused, deprived of adequate food, suffered serious physical injury, and was denied medical care, which resulted in permanent impairment. Alien was found eligible for relief on the basis of past persecution irrespective of the future risk. REINHARDT.

Lebanon

Karouni v. Gonzales, 399 F.3d 1163 (9th Cir. 2005)

Karouni v. Gonzales, **399 F.3d 1163 (9th Cir. 2005) (A75-530-521)**; reversing IJ's denial of asylum and withholding, and remanding for discretionary grant; PREGERSON.

Protected Grounds/ Particular Social Group, Found; PSG/Homosexuals. "[T]o the extent that our case-law has been unclear, we affirm that *all* alien homosexuals are members of a 'particular social group.' . . . [There is] no appreciable difference between an individual, such as [alien], being persecuted for being a homosexual and being persecuted for engaging in homosexual acts." (at 1172).
Well-Founded Fear/ Return Trips. Alien's two short trips back to the country he was fleeing, to attend to his dying father and mother, did not cut against his claim of fear of future persecution; visits only lasted total of three months, alien only returned because parents were dying, out of fear of persecution one trip was cut short and alien returned to United States before father's funeral, and second trip was delayed out of fear of persecution.

Lithuania

Kazlauskas v. INS, 46 F.3d 902 (9th Cir. 1995)

Kazlauskas v. INS, **46 F.3d 902 (9th Cir. 1995)**; affirming IJ's denial of asylum and withholding; (1) applicant did not have well-founded fear of persecution if he returns to Lithuania based on dramatic changes in Lithuania since August 1991 failed coup attempt in Soviet Union; (2) IJ did not abuse discretion by concluding that harassment and ostracism by his teachers and peers that applicant suffered was not atrocious past persecution to warrant discretionary grant of asylum; and (3) IJ's denial of waiver of deportation was supported by substantial evidence; WIGGINS; (NOONAN, dissenting, argued that the IJ failed to consider all the factors favorable to the petitioner).

Past Persecution/ Changed Conditions Found. Applicant did not have well-founded fear of persecution if he returns to Lithuania, where State Department country report described

dramatic changes in country since August 1991 failed coup in Soviet Union, with Lithuanian authorities fully assuming reigns of government, enacting numerous laws to protect individual rights, and discontinuing many of former Soviet practices of surveillance and control, and where there had been no reports of conduct by Lithuanian authorities similar to repressive and abusive conduct by former Soviet authorities.

Persecution/ Harassment. IJ did not abuse his discretion by concluding that harassment and ostracism by his peers and teachers that asylum applicant suffered in Soviet Union because he was religious and resisted participation in programs sponsored by Communist Party was not such atrocious past persecution as to warrant discretionary grant of asylum.

Mexico

Anaya-Ortiz v. Mukasey, 594 F.3d 673 (9th Cir. 2010)
Velasco-Cervantes v. Holder, 593 F.3d 975 (9th Cir. 2010)
Villegas V. Mukasey, 523 F.3d 984 (9th Cir. 2008)
Lemus-Galvan v. Mukasey, 518 F.3d 1081 (9th Cir. 2008)
Morales v. Gonzales, 478 F.3d 972 (9th Cir. 2007)
Ornelas-Chavez v. Gonzales, 458 F.3d 1052 (9th Cir. 2006)
Mendez-Gutierrez v. Gonzales, 444 F.3d 1168 (9th Cir. 2006)
Boer-Sedano v. Gonzales, 418 F.3d 1082 (9th Cir. 2005)
Mendez-Gutierrez v. Ashcroft, 340 F.3d 865 (9th Cir. 2003)
Aguirre-Cervantes v. INS, 242 F.3d 1169 (9th Cir. 2001)
Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000)

***Anaya-Ortiz v. Mukasey*, 594 F.3d 673 (9th Cir. 2010)(A92-962-367);** granting a motion for rehearing, issuing a superceding opinion and denying any further motion for rehearing. The circuit upheld a denial of relief to an individual who had been convicted of an aggravated felony. The new opinion struck the previous language with regard to upholding the aggravated felony charge and dealt with that issue in a now-unpublished decision. The new published decision deals only with whether the respondent had been convicted of a particularly serious crime, thereby becoming ineligible as a matter of law for both asylum and withholding of removal. The administrative decision relied upon a portion of respondent's testimony: "Anaya drove into a house while driving drunk. The collision caused part of the house's sheetrock wall to collapse on an elderly woman who lived inside causing injuries to her shoulder and leg." IKUTA; BERZON, concurring in part and dissenting in part.

Bars to Asylum/ Particularly Serious Crime, Found. The court accepted the Board's decision in *Matter of N-A-M-*, 24 I&N Dec. 336 (BIA 2007). The court further found that *Morales v. Gonzales*, 478 F.3d 972, 981 (9th Cir. 2007) had thereby been limited in terms of the IJ now being able to consider other evidence outside of the strict record of conviction. Here, the testimony by the respondent, although outside the record of conviction, was found to be "reliable" in relating his conduct. It could therefore be considered in making a particularly serious crime determination. Regarding the drunk driving conviction, the court found it reasonable to so hold: "the respondent after drinking alcohol to the point where he was intoxicated, began driving a motor vehicle in reckless disregard for persons or property whereupon he drove his car into the home of his victim causing property damage and bodily injury, and . . . was confined for his criminal actions." The court's decision makes only one brief reference to *Delgado v. Holder*, 563 F.3d 863 (9th Cir. 2009). There, the amended decision found that the respondent had not been convicted of a particularly serious crime notwithstanding his 3 felony DUI convictions, one of which involved an injury accident. The Delgado court found an "abuse of discretion" with regard to the PSC finding. The decisions may be harmonized in the sense that the Ninth Circuit will continue to review the PSC decision under the abuse of discretion standard. This was not triggered in Anaya, as he was deemed to have been convicted of an aggravated felony, and discretion does not figure into the decision to grant withholding of removal which is the most that Anaya could be provided with.

***Velasco-Cervantes v. Holder*, 593 F.3d 975 (9th Cir. 2010)(A200-099-714);** affirming a denial of relief based upon a particular social group claim. Respondent asserted that she was a member of a particular social group as she "was forced to serve as a material witness on behalf of the U.S. against illegal smugglers." She claims that she had been "threatened" and "narrowly avoided being raped." The smugglers made repeated threats to other members of her family that they would kill them as well if she testified. Credibility was not at issue. BEEZER.

REAL ID Act/ Reliance on Prior Case Law. Although this case was clearly considered under the REAL ID Act, the court makes no reference to the statute and relies upon authorities decided prior thereto.

Protected Grounds/ Particular Social Group, Not Found; Protected Grounds/ PSG/ Informant. In denying the claim, the circuit held that "former government material witnesses cannot be defined with 'sufficient particularity, '" citing *Arteaga v. Mukasey*, 511 F.3d 940, 944 (9th Cir. 2007); *Soriano v. Holder*, 569 F.3d 1162, 1169 (9th Cir. 2009) (a "government informant" is not a member of a PSG for purposes of asylum").

Villegas v. Mukasey, 523 F.3d 984 (9th Cir. 2008) **(A92-351-558)**; affirming a denial of relief of a CAT claim. The respondent had been convicted of second degree robbery. He had a long documented history of psychiatric illness. He was on multiple medications. The IJ found him credible, but that he had been convicted of a particularly serious crime (PSC). Asylum and withholding of removal were denied on that basis. The court found it did not have jurisdiction to review the IJ's finding that the conviction was a PSC. The court upheld the denial of relief under CAT even though the respondent, if removed, would be sent to a mental institution in Mexico where "conditions were deplorable." (at 986). HALL.

CAT/ Intent to Inflict Harm. In order to establish a successful claim, there must be sufficient evidence to demonstrate "specific intent to inflict harm." (at 985). The court distinguished *Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. 2003). There, in finding the alien eligible for CAT relief, the court held that "for a government official to acquiesce in acts of torture by a private party...the public official need not have actual knowledge of or willfully accept the torture...Rather, 'acquiescence' requires only that a public official have an awareness of the private torture which includes willful blindness to the act." (at 989). In other words, "a petitioner must show that severe pain or suffering was specifically intended- that is, that the actor intend the actual consequences of his conduct as distinguished from the act that causes those consequences." *Id.* Because there was no demonstration that anyone "created the conditions for the specific purpose of inflicting suffering upon the patients" in the mental institution, the claims must fail. *Id.*

***Lemus-Galvan v. Mukasey*, 518 F.3d 1081 (9th Cir. 2008)**; affirming a denial of relief. The court upheld a denial of relief to an aggravated felon on the basis that he "could safely relocate to another place in Mexico." (at 1083). He testified: "[H]e would be tortured by the Pimental family, a drug cartel that had been involved in a violent turf war with members of [respondent's] family in the northern border regions of Mexico." *Id.* There was no analysis to support this assessment. The discussion mostly justified the court's finding that it had jurisdiction to hear the claim. MCKEOWN.

Mendez-Gutierrez v. Gonzales, 444 F.3d 1168 (9th Cir. 2006) **(A75-301-863)**; affirming a denial of a "motion to reinstate his asylum application"; WALLACE.

Asylum Application/ Reinstatement. The respondent sought asylum as well as cancellation of removal. The IJ held that the respondent was not eligible for cancellation of removal. The respondent sought to reinstate his asylum application. This was denied and the BIA affirmed. On first appeal, 340 F.3d 865 (9th Cir. 2003), the panel held, "the Board did not abuse its discretion by requiring [Mendez-Gutierrez] to show prima facie eligibility for asylum before reopening his application." To the extent that the respondent failed to show past persecution, this was upheld. The panel remanded with regard to the claim of "future persecution." Upon remand the Board found that Mendez-Gutierrez still had not met his burden and to the extent that he raised other new issues, such "were beyond the scope of the court's remand." The panel sustained the Board's second decision.

Persecution/ Harassment; Well-Founded Fear/ Objectively Reasonable, Not Found. The respondent asserted that he had been "harassed and threatened by federal police because of his political affiliation. He expressed fear of death if he had to return to Mexico and stated that he had been "interrogated... and taken to a desolate place." He asserted that he was a member of the PAN. The panel noted that the PAN won the 2000 elections and remains in power currently. The panel characterized the respondent's claim as "vague and conclusory" and "clearly insufficient."

Board of Immigration Appeals/ Limited to Remand Order. "The Board like the district court has no power to extend our remand beyond the boundary ordered by our court."

Morales v. Gonzales, **478 F.3d 972 (9th Cir. 2007)**; remanding a case involving a claim of a transsexual who asserted she had been significantly mistreated in her prior gender as a male. The respondent had been convicted of communicating with a minor for immoral purposes. The assessment that this conviction was for a particularly serious crime (PSC) and hence a bar to eligibility for both asylum and withholding of removal was reversed. The denial of relief under CAT was also reversed. This case is a significant extension of *Afridi v. Gonzales*, 442 F.3d 1212 (9th Cir. 2006). There, the respondent had been convicted of an aggravated felony. In both cases, the court held that the agency below had not properly applied the factors set forth in *Matter of Frentescu*, 18 I & N Dec. 244 (BIA 1982) when making the PSC determination. THOMPSON.

Bar to Asylum/ Particularly Serious Crime, Not Found. The respondent argued that the conviction should not be deemed a CIMT. Her argument was rejected in that: "The full range of conduct prohibited by [the relevant statute] categorically constitutes a crime involving moral turpitude." The respondent had been accused of child molestation as well as rape, but she was convicted after jury trial of the crime of communicating with a minor for immoral purposes. The court held that the Immigration Judge erred by relying on the detailed factual assessment of the sexual misconduct with two boys, aged 15 and 14, set out by the Washington Court of Appeals

in its decision affirming the sufficiency of the evidence. The court held: "The same record of conviction is used in making both the aggravated felony and the PSC determinations." The Washington state appellate decision was not included within that record.

CAT/ Acquiescence. The court restated the holdings of *Reyes-Reyes v. Ashcroft*, 384 F.3d 782, 787-88 and *Zheng v. Ashcroft*, 332 F.3d 1186, 1194-95 (9th Cir. 2003) that there need not be any "direct government action." Under the court's view of "willful blindness" or "willful acceptance, " it would appear a governmental officer's awareness or involvement in an individual's significant physical mistreatment, even from many years ago, meets the requirement of 8 C.F.R. § 208.18(a)(1) that the torture be done at the "consent or acquiescence of a public official."

CAT/ More Likely Than Not, Found. The court granted CAT relief on the basis of the respondent's claim of incidents prior to 1986 when she was of a male gender, even though the case was presented to the IJ in 2004, almost twenty years after the physical abuse. The court granted relief on the basis of this prior history, without reference to the requirement of future risk under the regulations, notwithstanding the fact that the respondent had twice returned to Mexico without incident and had supportive family members remaining there.

***Ornelas-Chavez v. Gonzales*, 458 F.3d 1052 (9th Cir. 2006) (A96-106-917)**; A gay male with a "female sexual identity" reported ongoing acts of violence and harassment against him including a rape by his cousins. Much of the violence was at the hands of his family relatives. The court remanded finding that the Board "applied the wrong legal standard." BROWNING. There was a lengthy dissent by O'SCANNLAIN. In particular, he noted that the incidents occurred a number of years ago, the respondent was now an adult, conditions for gay Mexicans are not nearly as bad as claimed, and the majority improperly extended Ninth Circuit case law.

Unable or Unwilling to Control/ Reporting Not Required. The Board found that the respondent's background materials on problems experienced by gay people in Mexico "described only general police abuse" and were "inconclusive." The background materials, coupled with the failure to seek the assistance of the police led the Board to conclude that respondent did not prove "that the Mexican government is unwilling or unable to control those who harmed or may harm him." The court held that an applicant "need not have reported [his] persecution to the authorities if he can convincingly establish that doing so would have been futile or have subjected him to further abuse, " and remanded to the Board to apply this legal standard.

CAT/ Acquiescence. There is no need to show "that public officials must be informed of the alleged torture. The Board applied the wrong standard when it required evidence to "establish that the government 'sanctioned' his torture . . . ." The court cited to *Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. 2003), that in terms of government "acquiescence, " (8 C.F.R. § 208.18(a)(1)), the respondent only need show that public officials "would turn a blind eye to torture." The assertion that the standard set forth in *Matter of J-E-*, 23 I & N Dec. 291 (BIA 2002), that the public official would need to have had "custody or physical control of him" to establish the CAT claim was rejected.

Boer-Sedano v. Gonzales, **418 F.3d 1082 (9th Cir. 2005) (A76-335-880)**; The sexual abuse and death threat that the citizen of Mexico received from a police officer constituted past persecution. This notwithstanding the alien's particular problems occurring in a small town, that he subsequently moved to a large city, and did not report any further problems other than that his life "remained difficult." After a first departure from Mexico to the U.S., he went back and forth between the countries. The IJ had found that the assault stemmed from a "personal problem" and that the alien had not reported the assault to law enforcement authorities. The court reaffirmed the holdings of *Karouni v. Gonzales*, 399 F.3d 1163, 1172 (9th Cir. Mar. 7, 2005), that, "alien homosexuals constitute a particular social group" and *Navas v. INS*, 217 F.3d 646, 658 (9th Cir. 2000), that, "death threats alone can constitute persecution." The IJ had characterized the alien as "a low profile non-transvestite gay man who has never been openly identified as a homosexual except by the one police officer" who actually perpetrated the physical violence and made the threat. The IJ denied relief because, "there is no evidence of systematic official persecution of homosexuals, " found "relocation was possible, " and found that the alien's "fear of persecution is completely alleviated by his repeated voluntary return trips to Mexico." D.W. NELSON.

Past Persecution/ Changed Conditions Not Found. The court relied on particular comments in the record from not only the Department of State but also from private groups to find that sufficient problems remained so as not to accept this holding.

Past Persecution/ Internal Relocation Not Possible. The court ruled that this would not be a reasonable option given "social and cultural constraints." *Melkonian v. Ashcroft*, 320 F.3d 1061, 1070 (9th Cir. 2003), as well as his own health problems related to his having AIDS.

Well-Founded Fear/ Return Trips. "We have never held that the existence of return trips standing alone can rebut" the presumption that past persecution justifies relief.

CAT. Notwithstanding all of the above and finding explicit eligibility for both asylum and withholding of removal, the denial of the CAT claim was upheld on the basis of the failure to meet the burden of proof.

Mendez-Gutierrez v. Ashcroft, **340 F.3d 865 (9th Cir. 2003) (A75-301-863)**; remanding for consideration of merits of asylum claim before BIA can deny request for reinstatement of asylum application; FISHER.

Asylum Application/ Reinstatement. Fact that no statute or regulation specifically governed reinstatement of a voluntarily withdrawn asylum application did not preclude Court of Appeals from exercising jurisdiction to review BIA's denial of alien's request to reinstate his voluntarily withdrawn application; request for reinstatement was analogous, at least to some degree, to a motion to reopen, which was governed by a clear set of rules and regulations. "Although it appears doubtful that [alien] will be able to establish a well-founded fear of future persecution, given the PRI's loss of the Mexican presidency to PAN member Vincente Fox in 2000, we note that the political climate in Mexico is fluid." (at 870).

Aguirre-Cervantes v. INS, **242 F.3d 1169 (9th Cir. 2001) (*opinion vacated on reh'g en banc*, 273 F.3d 1220 (9th Cir. 2001) *and remanded for a stipulated reopening*) (A76-627-200)**; vacated opinion held that: (1) applicant exhausted remedies with respect to argument she was persecuted on account of her membership in her immediate family; (2) family group could qualify as "particular social group" within meaning of asylum statute; (3) applicant's immediate family was "particular social group"; (4) persecution of applicant was "on account of" membership in such group; (5) Mexican government was unable or unwilling to control abusive behavior inflicted on applicant by father; and (6) that applicant was now 19 years old was insufficient to rebut presumption that she had well-founded fear of future persecution.

Hernandez-Montiel v. INS, **225 F.3d 1084 (9th Cir. 2000) (A72-994-275)**; granting withholding and remanding for a discretionary grant of asylum; (1) gay men with female sexual identities in Mexico comprised particular social group for purposes of asylum statute; (2) applicant was member of such group; and (3) sexual assaults on applicant by police officers were "on account of" his membership in such group; TASHIMA; (BRUNETTI, concurring, disagreed with the broad reasoning and rationale of the majority).

Protected Grounds/ Particular Social Group, Found; PSG/Transgender or Transsexual. Applicant's membership in a social group of gay men with female sexual identities constituted "membership in a particular social group" ; the fact that applicant suffered persecution rather than change indicated that his sexual identity was fundamental, and he gave credible, uncontradicted testimony about the inherent and immutable nature of his sexual identity.
Nexus/ Motive Found. Sexual assaults on the applicant by police officers were "on account of" his membership in particular social group; an expert in Latin American history and culture testified that gay men with female sexual identities were recognized in Mexico as a distinct and readily identifiable group and were persecuted; police would attack and rape men with female sexual identities.
Past Persecution/ Failure to Rebut. INS failed to overcome presumption of future persecution that arose when asylum applicant established past persecution by police on account of his membership in social group of gay men with female sexual identities in Mexico; INS presented no evidence that Mexico had taken effective steps to curb sexual orientation-based violence, and expert testified that situation for gay men in Mexico had worsened because of decline of economy.

Morocco

Chebchoub v. INS, 257 F.3d 1038 (9th Cir. 2001)

***Chebchoub v. INS*, 257 F.3d 1038 (9th Cir. 2001) (A70-863-287)**; upholding adverse credibility determination and denying asylum; petition denied; Alien asserted he had been beaten and arrested because of his involvement in political advocacy; WALLACE; *distinguished by Shire v. Ashcroft*, 388 F.3d 1288 (9th Cir. 2004).

Credibility/ Inconsistencies, Material. Alien's inconsistent testimony regarding events causing his departure from Morocco and number of times he was arrested for political activities, along with implausibility of his testimony regarding Morocco's exile practices, related to basis for his fear of persecution and went to heart of asylum claim, and he inexplicably failed to submit corroborative evidence that should have been readily available.

Credibility/ State Department Reports, Reliance On Permitted. "[T]he use of a country report to discredit a general assertion made by an applicant regarding the context in which his alleged persecution took place does not offend the individualized analysis of an applicant's credibility that our case law mandates." (at 1044). General assertions made by the applicant that are inconsistent with state department reports can be discredited by comparison thereto, so long as such is 'supplemental' to other credibility concerns." (at 1044).

Credibility/ Corroboration Required. Alien's failure to submit corroborative affidavits from his brother in France and other members of political group with which alien was allegedly associated supported adverse credibility determination; securing affidavit from close relative living in Western Europe and from person in United States to support alien's political involvement in group that alien claimed was commonly expelled from Morocco should have been relatively uncomplicated task that would not pose type of evidentiary burden that would excuse corroboration. "If the trier of fact does not believe the applicant or does not know what to believe, the applicant's failure to corroborate his testimony can be fatal to his asylum application. Thus the regulations unambiguously contemplate cases where an applicant's testimony alone will not satisfy his burden of proof." (at 1042).

Nepal

Tamang v. Holder, _F.3d_ 2010 WL 917202 (9th Cir. 2010)
Shrestha v. Holder, 590 F.3d 1034 (9th Cir. 2010)
Dhital v. Mukasey, 532 F.3d 1044 (9th Cir. 2008)

> ***Tamang v. Holder*, _F.3d_ 2010 WL 917202 (9th Cir. 2010)(A98-840-654);** affirming a denial of relief by applying the REAL ID Act. The respondent did not assert a claim of "personal persecution." Rather, Maoists had broken his brother's leg and generally threatened the family. The brother had been granted asylum. Respondent sought to justify his untimely asylum application by asserting ineffective assistance of counsel. BENITEZ.

Bars to Asylum/ One Year Bar, Ineffective Assistance of Counsel. Respondent could not identify the attorney who he claimed had provided ineffective assistance nor could he provide any other specific details. The court emphasized the need for compliance with the *Lozada* requirements as the case reflected the very "circumstances for which [they] were intended." "The goal of *Lozada* was to provide a more effective basis from which to assess the veracity of the substantial number of ineffective assistance claims asserted by asylum applicants and to hold attorneys to appropriate standards of performance." The court explained that to qualify for the exception under 8 C.F.R. § 1208.4(a)(5)(iii)(A) - (C), the alien must (1) provide an affidavit which details the relationship with counsel to include the relied upon representations; (2) inform the counsel being complained of the allegations made and give him the opportunity to respond; and (3) file an appropriate complaint against the lawyer. The court rejected Respondent's efforts to avoid these requirements in his argument that the ineffective assistance was "plain on its face." The court restated the principle from *Albillo-DeLeon v. Gonzales*, 410 F.3d 1090, 1099 (9th Ci. 2005) that "ineffective assistance" cannot be based on the performance of a "mere consultant or friend whose opinion" might have been relied upon to the applicant's detriment.

Persecution/ Of Family. The fact that threats were made against the family and indeed that the brother had been granted asylum was not sufficient to justify the grant of asylum to respondent. The court cited to the lack of "personal persecution" of respondent, the fact that family

members had returned to Nepal without incident, respondent himself had been in the U.S. when the attack on his brother and threats had occurred, and there had been improved country conditions. The court cited five cases for the proposition that "it is well established . . . an alien's history of willingly returning to his or her home country militates against a finding of past persecution or a well-founded fear of future persecution." The fact that the brother had been granted asylum was not found to require that respondent receive asylum, in addition to the fact that the filing was untimely.

Credibility - Post-REAL ID/ Selective Examination of Evidence. The respondent had claimed that "nothing had changed" with regard to political developments in Nepal. The court upheld the adverse credibility finding regarding that assessment under *Shrestha v. Holder*, 590 F.3d 1034, 1039-48 (9th Cir. 2010). The court noted, however, that "an IJ cannot selectively examine evidence in determining credibility, but rather must present a reasoned analysis of the evidence as a whole and cite specific instances in the record."

> ***Shrestha v. Holder*, 590 F.3d 1034 (9th Cir. 2010)(A079-811-128);** affirming a denial of relied applying the REAL ID Act. The decision has a lengthy discussion about credibility and corroboration standards. Respondent claimed that Maoists had attempted to recruit him and that he was brutally beaten when he resisted. The IJ found that the Respondent was not credible. GOULD.

Credibility Post-REAL ID Act; REAL ID Standard; Unresponsiveness; Lack of Detail. To support an adverse credibility determination, the IJ must "provide specific and cogent reasons." The IJ further should evaluate "the petitioner's explanation for a perceived inconsistency." One of the recognized bases for finding a lack of credibility is "unresponsiveness." "The agency is not required to provide a pinpoint citation to the record, but rather to "identify particular instances in the record where the petitioner was unresponsive." In the case at bar, the standard was met when the IJ found that the respondent "was unresponsive to questions concerning 'whether anyone may have been looking for him, '" which established "specificity in pointing to instances of unresponsiveness." Another recognized basis for finding a lack of credibility is "lack of detail." The Respondent "did not identify the names of any of the Maoists or describe them in any way. Nor did he state how many were inquiring about him, why they were looking for him, what they wanted, why he thought their interest in him persisted given that they had not inquired about him since 2001, or why he continued to fear the Maoists in light of their apparent loss of interest in him." Another recognized basis for finding a lack of credibility is inconsistency. The IJ had found inconsistency between the testimony that the Maoists had inquired about him on two specific occasions in 1998 and 2001 and a more general assertion that there had been inquiries "frequently." The court found that no explanation had been provided for this inconsistency and considered it an "important factor" as it related to "the underlying events that give rise to his fear."

Credibility Post-REAL ID Act/ Corroboration. The court cited to *Aden v. Holder*, 589 F.3d 1040 (9th Cir. 2009) for the premise that even a credible petitioner may be required to provide "reasonably obtainable" supportive evidence. In this case, the respondent's parents could have

directly supported his claim but did not. The fact that they were illiterate and "in fear of the Maoists" did not excuse this obligation.

CAT/ Standard Where No Credibility. "When the petitioner's testimony is found not credible, to reverse the BIA's decision denying CAT protection we would have to find that the reports alone compelled the conclusion that the petitioner is more likely than not to be tortured. *Almaghzar v. Gonzales*, 457 F.3d 915, 922-23 (9th Cir. 2006). As of May 2006, there was a peace accord in place between the Maoists and the Nepalese Government" and the Respondent had not otherwise made the required showing.

***Dhital v. Mukasey*, 532 F.3d 1044 (9th Cir. 2008) (A79-625-778)**; affirming a denial of relief. The respondent "confessed that he previously had been granted asylum under a false identity." (at 1047). He asserted that "he was a popular political activist in Nepal who opposed the Maoists." *Id.* He was "encouraged to join" and "threatened" as well as "attacked" when he refused. *Id.* Thereafter, he came to the U.S. where he continued to engage in public advocacy against the Maoists. Family members who remained in Nepal were then threatened and Maoists "seized his parent's land." *Id.* The respondent was granted asylum. He then failed to attend college classes for which he received permission under the false identity but for other purposes, continued to use his correct name. He was again placed in proceedings. His second application for asylum was denied by the same IJ who previously granted his earlier case. The Board found that his first application had been frivolous and that it was time barred. PER CURIAM.

Asylum Application/ Frivolous. The court found that this finding was not consistent with the Board's holding in *Matter of Y-L-*, 24 I&N Dec. 151 (BIA 2007). It chose not to remand "because the BIA articulated an alternative ground for its decision." (at 1048).

Bars to Asylum/ One Year Bar, Found. The court upheld the finding of an untimely application. "Dhital did not file his second asylum application until 22 months after he failed to enroll in school..." The argument that it was reasonable to have filed such "76 days after being served with his Notice To Appear" was rejected. (at 1050).

Credibility/ Propensity For Dishonesty. The adverse credibility determination was upheld in that he had a "propensity for dishonesty, " citing to *Don v. Gonzales*, 476 F.3d 738 (9th Cir. 2007), on the basis of his concession of having previously lied. *Id*.

CAT/ Individualized Threat. This claim was rejected on the basis that the evidence did not show that "Dhital would face any particular threat of torture beyond that of which all citizens of Nepal are at risk." (at 1051).

Nicaragua

Robleto-Pastora v. Holder, 591 F.3d 1051 (9th Cir. 2010)
Vallecillo-Castillo v. INS, 121 F.3d 1237 (9th Cir. 1997)
Mejia-Paiz v. INS, 111 F.3d 720 (9th Cir. 1997)
Gutierrez-Centeno v. INS, 99 F.3d 1529 (9th Cir. 1996)
Lopez-Galarza v. INS, 99 F.3d 954 (9th Cir. 1996)
Osorio v. INS, 99 F.3d 928 (9th Cir. 1996)
Rodriguez-Matamoros v. INS, 86 F.3d 158 (9th Cir. 1996)
Gonzalez v. INS, 82 F.3d 903 (9th Cir. 1996)

> ***Robleto-Pastora v. Holder*, 591 F.3d 1051 (9th Cir. 2010)(A27 447 476)**; affirming a denial of relief regarding the current asylum request as well as a request to "readjust" based on a former grant of asylum. Credibility was not at issue. Respondent and his family had left the country at a time when the government was controlled by Sandinistas. He became an LPR and was later convicted of an aggravated felony for forgery. He again applied for asylum and sought termination of the proceedings. The current claim was based on the fact that he had lost his government employment because he was perceived as a supporter of the former government and he was unable to find other employment. Two brothers experienced periods of detention and mistreatment in 1981-82. The family is related to "a famous anti-Sandinista leader." Notwithstanding the 2006 reelection of Sandinista leader and a stated fear of return, the respondent "failed to produce evidence that the currently democratically elected administration was persecuting former Somoza-government employees or members of Robleto's family." CALLAHAN.

Asylum Application/ Prior Grant of Asylum; Well-Founded Fear/ No Presumption from Previous Asylum Grant. The Court rejected the claim that respondent is eligible for asylum and withholding "based on the previous grant of asylum which he asserts entitles him to a presumption of a well-founded fear of persecution." The court was unwilling to find past persecution notwithstanding the experiences of the brothers.

Adjustment of Status/ Readjustment of Asylee. The Court did not permit the respondent to "readjust" his status to that of an LPR. Respondent had argued that because his asylee status had never been formally terminated, he could "readjust" under INA § 209(b) and (c). The Court cited to *Saintha v. Mukasey*, 516 F.3d 243 (4th Cir. 2008) and *Gutnik v. Gonzales*, 469 F.3d 683 (7th Cir. 2006) in finding that an alien who adjusted from refugee status to LPR status under section 209(a) was ineligible to readjust under sections 209(b) and (c).

Due Process/ Access to Complete File. The Court found no due process violation even though "his request for a continuance to obtain his immigration records" was denied. There had not been any "prejudice" because he was "able to present his full claims for relief without it."

***Mejia-Paiz v. INS*, 111 F.3d 720 (9th Cir. 1997) (A27-250-753)**; upholding denial of asylum and withholding based on applicant's failure to present candid, credible and sincere testimony demonstrating genuine fear; SNEED; (FERGUSON, dissenting, argued that the government violated the First Amendment by deciding the religious question of who is a Jehovah's Witness).

Well-Founded Fear/ Subjectively Genuine. Asylum applicant from Nicaragua claiming religious persecution as Jehovah's Witness failed to satisfy subjective component of well-founded fear standard by failing to present candid, credible and sincere testimony demonstrating genuine fear of persecution; he could have offered proof that he was member of Jehovah's Witness but did not, his testimony was inconsistent as to when he was fired from his job and whether he joined Sandinista-supported employees' union, and he could not recall year in which he became Jehovah's Witness.

Well-Founded Fear/ Objectively Reasonable, Not Found. "Proving one's membership in a church does not pose the type of particularized evidentiary burden that would excuse corroboration." (at 723–24).

Administrative Proceedings/ Judicial Notice. IJ took judicial notice that Jehovah's Witnesses were prohibited from swearing under oath and could only *affirm*, and noted that applicant swore under oath on two occasions. "We recognize that even a Jehovah's Witness might have sworn under oath in the circumstances in which the petitioner found himself. Although we would consider this inconsistency, amongst a body of credible and persuasive evidence to the contrary, an inadequate basis for anadversecredibility finding, ... we find no fault in the IJ's mention of it. It is but one of numerous telling details in this case." (at 724).

***Gutierrez-Centeno v. INS*, 99 F.3d 1529 (9th Cir. 1996) (A28-813-958);** upholding denial of asylum and withholding; remanding based on BIA's abuse of discretion in denying suspension of deportation; REINHARDT; *suspension portion of decision superseded by statute as stated in Falcon Cariche v. Ashcroft*, 350 F.3d 845 (9th Cir. 2003).

Well-Founded Fear/ Objectively Reasonable, Not Found. Evidence of arrest of petitioner's uncle, reduction of her food ration card, and government file characterizing her as

untrustworthy was not so compelling that reasonable fact finder would have to conclude that she established well-founded fear of persecution.

Vallecillo-Castillo v. INS, **121 F.3d 1237 (9th Cir. 1997) (A29-764-279);** granting withholding and remanding for discretionary grant of asylum; PREGERSON; (TROTT, dissenting, argued the majority misapplied the substantial evidence test and should have remanded for the BIA to decide whether the presumption has been overcome).

Persecution/ Of Family; Threats; Property Damage. Alien suffered past persecution, where his uncle and brother were imprisoned for their participation in and support of the Somoza government, alien was branded a traitor for his refusal to teach Sandinista doctrine and was harassed for not attending CDS meetings, and threats led to alien's home being set on fire, pelted with rocks, and vandalized with slogans decrying his family as traitors painted on the house.

Past Persecution/ Changed Conditions, Administrative Notice. Administrative notice of changed country conditions alone does not overcome the presumption of a reasonable fear of future persecution when the alien has presented specific evidence.

Lopez-Galarza v. INS, **99 F.3d 954 (9th Cir. 1996) (A29-769-387);** reversing denial of asylum and withholding based on BIA's failure to consider whether past persecution was atrocious; reversed and remanded; Alien's actions in remaining in Nicaragua for eight years, working, marrying and having children after she was raped and abused while imprisoned on account of **her** political opinion were not relevant to atrocity of her past persecution; persecution had already taken place, and remaining did not lessen its severity; HAWKINS; *distinguished by Ochave v. INS*, 254 F.3d 859 (9th Cir. 2001).

Persecution/ Rape; Detention; Forced Labor; Food Deprivation. Alien suffered past persecution on account of her political opinion, where she was imprisoned because her neighbor accused her of being contra supporter and Sandinista military officials knew of her father's ties to previous regime, and, while she was in captivity, her captors raped her, physically abused her, deprived her of food, and subjected her to forced labor.

Osorio v. INS, **99 F.3d 928 (9th Cir. 1996) (A23-729-579)**; reversing adverse credibility determination and remanding; REINHARDT.

Credibility/ Articulable Basis. "If, on remand, the Board or the IJ seeks to conclude once again that Osorio is not a credible witness, it must identify the specific inconsistencies on which it

rests its adverse credibility determination, and it must address in a reasoned manner the explanations that Osorio offers for these perceived inconsistencies." (at 933).
Past Persecution/ Individualized Analysis. "In addition, if the Board or the IJ determines that Osorio has experienced past persecution, it must afford him the benefit of the presumption that he has a well-founded fear of future persecution. This presumption can be overcome only by an individualized analysis of Osorio's situation that demonstrates that changed conditions in Nicaragua have eliminated the basis for Osorio's individual fear of future persecution." (at 933).

> ***Rodriguez-Matamoros v. INS*, 86 F.3d 158 (9th Cir. 1996) (A70-290-431)**; reversing and finding past persecution sufficient for a grant of asylum; BIA abused its discretion by failing to provide sufficient explanation of its decision to deny asylum; RYMER.

Persecution/ Physical Harm; Property Damage; Of Family. Alien credibly testified she was severely beaten, her home was vandalized, she and her family were threatened with being burned alive, and her sister was tortured and then killed in her presence all on account of her political beliefs and those of her family.

> ***Gonzalez v. INS*, 82 F.3d 903 (9th Cir. 1996) (A28-716-701)**; upholding denial of religious-based asylum claim; reversing denial of asylum based on political opinion; petition denied in part, remanded in part; KLEINFELD *distinguished by* *Theagene v. Gonzales*, 411 F.3d 1107 (9th Cir. 2005).

Nexus/ Motive Not Found. Alien's fear of future persecution on account of her religion (Jehovah's Witness) was not well-founded; primary harm she had suffered was being forced into national service during Sandinista regime where she would have to wear uniform and carry gun, which was contrary to her conscience, but imposed on all young people, she did not try to ascertain whether she could perform national service without meeting those requirements, and she did not feel compelled to leave Nicaragua until after her mother's house was taken away by government, long after impositions on her church.
Nexus/ Motive Found; Well-Founded Fear/ Objectively Reasonable, Found. Alien's fear of persecution on account of her political opinion as Somoza supporter was well-founded; she was personally threatened based on her political opinion with being "disappeared, " threats were repeated, they were backed by official position of Sandinista neighborhood committee and visits from armed soldiers, her family suffered from considerable violence on political grounds, she was afraid to go back to Nicaragua to pick up immigrant visaat American Consulate, her ration card and her business's ability to buy inventory were taken away on account of her political opinion, and her family land was taken away for political reasons.
Administrative Proceedings/ Judicial Notice. "Taking notice of legislative, undebatable facts, such as an election result and new parliamentary majority, does not require notice and an opportunity to be heard, but taking administrative notice of post-hearing debatable adjudicative facts without warning and an opportunity to offer rebuttal denies due process of law." (at 912).

Nigeria

Tijani v. Holder, _F.3d_, 2010 WL 816973 (9th Cir. 2010)
Unuakhaulu v. Ashcroft, 398 F.3d 1085 (9th Cir. 2005)
Azanor v. Ashcroft, 364 F.3d 1013 (9th Cir. 2004)
Salaam v. INS, 229 F.3d 1234 (9th Cir. 2000)
Akinmade v. INS, 196 F.3d 951 (9th Cir. 1999)

> ***Unuakhaulu v. Ashcroft*, 398 F.3d 1085 (9th Cir. 2005) (*amending and superseding* 392 F.3d 1024) (A74-777-018)**; upholding IJ's adverse credibility determination; alien failed to demonstrate he would suffer persecution based on his membership in tribe; petition denied; Alien had been convicted of conspiracy to traffic in counterfeit credit cards; he was denied withholding of removal and CAT relief. He testified that "the Nigerian government engaged in tribal genocide of the Ogoni people, seizing their land in the delta region for its oil, and arresting and executing Ogonis solely because of their opposition to the government." His father's land had been seized, "his seven siblings left Nigeria because of the treatment of the Ogoni." (at 1087–88). Respondent claimed that his uncle was a very prominent political activist who had been mentioned in an Amnesty International report of record, and further asserted that the uncle had been in jail for many years and was "still in prison" because of his political activism. (at 1088). The court accepted the proposition that "corroborating proof was 'more than necessary here because the respondent's conviction is for a crime involving fraud which already undermines his credibility.'" (at 1092). FISHER.

Withholding Of Removal/ Denied. Alien's concession that the Nigerian government could not identify him as Ogoni, coupled with his admission that he was not persecuted in the past, demonstrate that he has not met his burden of proving that it is more likely than not that he would be subject to persecution on account of his tribal affiliation. (at 1091).

Country Reports/ Use For Credibility. "Country conditions evidence generally provides the context for evaluating an applicant's credibility, rather than corroborating specifics of a claim. *See* *Duarte de Guinac v. INS*, 179 F.3d 1156, 1162 (9th Cir. 1999)." (at 1091).

Credibility/ Detail, Lack Of; Corroboration Required. "[The IJ] found that parts of [alien's] testimony were meager and nonspecific and that the absence of corroborative evidence where one would reasonably expect there to be, along with an adequate explanation of why such evidence was not obtained nor presented leaves thecourttodraw an adverse inference regarding the credibility of the respondent's claim. [The IJ] also found that corroborating proof was more than necessary here because the respondent's conviction is for a crime involving fraud which already undermines his credibility." (at 1091–92 (internal quotations omitted)).

Past Persecution/ Internal Relocation Possible. "The IJ found that [alien]'s testimony 'basically paralleled' information contained in the Country Report—that Ogonis who live in their homeland, the delta region of Nigeria, who are political activists are identifiable as Ogonis and thus may be subjected to persecution by the Nigerian government. This, however, did not establish that [alien] is a member of the Ogoni tribe or that it is more likely than not that he would be subjected to persecution if he were deported to another region of Nigeria outside of the delta region." (at 1092).

***Tijani v. Holder*, _F.3d_, 2010 WL 816973 (9th Cir. 2010)(A27-431-266);** remanding a denial of relief based on a failure to corroborate where there had not been an explicit adverse credibility determination. This was not REAL ID Act case, and the court noted the result would have been different thereunder. The decision primarily discussed whether Respondent was removable as an alien convicted of two crimes involving moral turpitude, with less discussion devoted to the asylum claim. Respondent had been convicted of providing false information to obtain credit cards to obtain goods on separate occasions, among other offenses. The dissent notes "Tijani has been found by judges to have lied on 16 prior occasions." The asylum claim was based on his converting from Islam to Christianity and that on a return visit to Nigeria he had been violently assaulted for such. NOONAN; partial concurrences and dissents by TASHIMA and CALLAHAN.

Credibility - Pre-REAL ID/ Corroboration Not Required. The IJ ruled that considering the multiple lies with respect to his convictions as well as the conflict between his story of change in religion and the account given in a supporting letter, the IJ had "reason not to believe him." The IJ explicitly refused to rule that the respondent was not credible, reasoning that he could not find an inconsistency in testimony. Notwithstanding there being "reasons set out strongly" for doubting the respondent's credibility, the circuit rejected the administrative requirement of corroboration because the adverse credibility determination was not "explicit" and therefore could not support a requirement for "corroboration evidence."

CIMT/ Fraud. The majority held that the "full range of conduct" involved in the statutory violation "involves fraud" even though there was no specific requirement of an "intent to defraud." In other words, the "intent to defraud" was found to be "implicit" in the nature of the crime.

***Azanor v. Ashcroft*, 364 F.3d 1013 (9th Cir. 2004) (A73-123-347)**; remanding CAT claim; upholding denial of asylum based on insufficient motion to reopen; WALLACE.

Ineffective Assistance/ Not Plain on Face. Where Nigerian national, in filing out-of-time motion to reopen deportation proceedings based on her attorney's alleged ineffective assistance in not presenting, as ground for asylum, the fact that she had been subjected to FGM in Nigeria, did not include affidavit setting forth in detail her agreement with attorney as to what actions were to be taken on appeal, BIA did not abuse its discretion in denying her untimely motion to reopen; counsel's ineffectiveness was not plain on the face of the administrative record, given that alien, by her own admission, had never informed attorney of her FGM.

CAT/ Acquiescence. "Although an alien might qualify for withholding of deportation under the INA by showing that public officials would be merely unable or unwilling to prevent torture by private parties, *Mgoian v. INS*, 184 F.3d 1029, 1037 (9th Cir. 1999), INS regulations unequivocally dictate than an alien has no right to withholding of removal under the torture Convention absent evidence of public officials' 'consent or acquiescence.'" (at 1019). The risk of FGM would be at the hands of private individuals would be at the hands of private individuals, not the government.

CAT/ Torture, Found. "The *In re J-E-* standard [23 I&N Dec. 291 (BIA 2002) (*en banc*)] impermissibly prevents aliens from seeking relief under the Torture Convention for claims based on threats of torture when not in official custody. Rather than perpetuate the Board's error by deferring to its misinterpretation of section 208.18, we hold that the Board abused its discretion by transgressing Congress's clearly expressed intent to protect aliens from non governmental acts of torture committed with public officials' consent or knowing acquiescence." (at 1020).

***Salaam v. INS*, 229 F.3d 1234 (9th Cir. 2000) (A73-874-026)**; treating "implausibility" finding as adverse credibility finding; reversing finding that applicant failed to produce corroborating evidence; granting withholding and remanding for a discretionary grant of asylum; BROWNING, HALL, and SILVERMAN.

Credibility/ IJ Speculation. BIA's statement that it was not plausible that applicant at age 18 was leading member of group opposing government abuses, or that he would have continued to post his name on fliers critical of government after being arrested and beaten for writing fliers, were based on unsupported speculation by the IJ.

Credibility/ Corroboration Provided. Alien provided reasonable explanation for absence of documents in stating that he was able to gather few items when hastily leaving Nigeria and that it would have been dangerous for him to carry fliers critical of government during escape, alien

showed scars received from police beatings, and record contained two reports describing conditions in Nigeria, document explaining mission of alien's organization, and testimony that alien was dedicated member of opposition.
Persecution/ Detention; Physical Harm; Protected Grounds/ Political Opinion, Found. Alien suffered past persecution on account of political opinion, where on four occasions he was arrested by police, held incommunicado for several days, and tortured because he wrote and distributed fliers critical of government.

> ***Akinmade v. INS*, 196 F.3d 951 (9th Cir. 1999) (A72-898-030)**; reversing adverse credibility determination and remanding for discretionary grant of asylum; Alien, who was detained and tortured by Nigerian police on account of his involvement in anti-government, pro-democracy student activism and who narrowly escaped being killed by the police and fled the country while the authorities were still searching for him, was eligible for asylum. REINHARDT; (WIGGINS, dissenting, argued that false statements at entry, being made to U.S. and not to Nigerian officials, should not be explained away).

Credibility/ Misrepresentations. Alien's use of a false Canadian passport and his false declaration that he was a Canadian citizen on a visit for pleasure, could not serve as basis for adverse credibility finding; applicant's misrepresentations to immigration officials, in the course of fraudulently entering the United States, were wholly consistent with his claim to be fleeing persecution. Even if asylum applicant lied about his involvement in the forging of Canadian passport or about how he obtained his airline ticket, those acts did not support an adverse credibility determination; as with his fraudulent entry, the alleged conduct concerned facilitating travel and entry into the United States and was "incidental" to applicant's claim of persecution.
Credibility/ Corroboration Provided. Alien's affidavit providing an account of his political activities in Nigeria and mistreatment by Nigerian police did not provide a basis for adverse credibility determination; alien's account was sufficiently descriptive of the pertinent events, the supposed discrepancies were minor or non-existent, and alien's act of abandoning his studies and fleeing his country of origin corroborated his testimony as did the general descriptions of the political situation in Nigeria contained in the U.S. Department of State Report and Amnesty International publications.

Pakistan

Kaiser v. Ashcroft, 390 F.3d 653 (9th Cir. 2004)
Hakeem v. INS, 273 F.3d 812 (9th Cir. 2001)
Ladha v. INS, 215 F.3d 889 (9th Cir. 2000)

***Hakeem v. INS*, 273 F.3d 812 (9th Cir. 2001) (A28-846-195)**; dismissing appeal of one-year filing issue; upholding IJ's denial of withholding; reversing the IJ's adverse credibility determination and viewing the testimony as "wholly credible" (at 816); HALL.

Well-Founded Fear/ Continued Family Presence; Return Trips. Alien was not entitled to withholding of removal based on claim he would be persecuted or killed for changing his religion; no one in alien's family had ever been charged, arrested, or physically harmed based on their change in faith, and alien had returned twice to Pakistan and practiced his faith without incident.

Country Reports/ To Support Claim, Insufficient. Evidence in the State Department country report that of the 3.5 million Ahmadis in Pakistan, which form a very small portion of the population, 145 Ahmadis are awaiting trial under Pakistani secular blasphemy laws, and that in 1998, 44 Ahmadis were charged under the blasphemy laws, or that Koranic law dictates a death sentence for anyone who changes religions, and that the practice of the religion is subject to criminal sanction, does not compel the conclusion that alien, more likely than not, will be arrested or persecuted under these laws.

Well-Founded Fear/ Individualized Risk. "[E]ven for purposes of the less stringent asylum standard, the applicant must show more than the existence of a generalized or random possibility of persecution in his native country." (at 816).

***Kaiser v. Ashcroft*, 390 F.3d 653 (9th Cir. 2004) (A75-707-798)**; upholding denial of withholding, reversing denial of asylum and remanding for a discretionary grant; WARDLAW.

Well-Founded Fear/ Objectively Reasonable, Found. Asylum applicants established well-founded fear of future persecution if returned to Pakistan; one applicant was placed on political party's death list, entire family was repeatedly threatened with death, father and son were followed by members of political party on at least one occasion in a fashion similar to that experienced by another ex-military officer before his murder by party, and state department

country report suggested that party was active organization that resorted to violence to accomplish goals.
Persecution/ Threats, Unfulfilled. Fact that none of the threats made against aliens had been carried out did not render fear of future persecution if returned to home country unreasonable; party did not begin threatening family directly until they moved and then frequency and severity of threats increased dramatically, and applicant offered corroborative evidence including State Department country report and numerous articles illustrating party's willingness to use violence.
Past Persecution/ Internal Relocation Not Possible. Areas where applicants had lived peacefully were areas they lived before they began receiving life-threatening phone calls, after that time applicants received threatening phone calls in multiple areas, including in cities on opposite sides of Pakistan. "Because the threats occurred from one end of Pakistan to the other, we are convinced that there is no area in Pakistan where Petitioners would be free from persecution by the MQM." (at 660).

> ***Ladha v. INS*, 215 F.3d 889 (9th Cir. 2000)**; reversing denial of asylum on failure to corroborate and finding aliens eligible for asylum; WARDLAW; *declined to extend by Sidhu v. INS*, 220 F.3d 1085 (9th Cir. 2000).

Credibility/ Corroboration Not Required. After reviewing the BIA's interpretation of the regulations requiring corroborative evidence for certain alleged facts pertaining to the specifics of an applicant's claim, the court states, "We are not free to consider as an open question whether the BIA has hit upon a permissible interpretation of the INA, for the law we must follow is already set out for us: 'this court does not require corroborative evidence, ' *Cordon-Garcia v. INS*, 204 F.3d 985, 992 (9th Cir. 2000), from applicants for asylum and withholding of deportation who have testified credibly." (at 899). "We have taken this opportunity to review the extensive and consistent rule on corroboration of our circuit because of the BIA's apparent adherence to an incompatible rule. We reaffirm that an alien's testimony, if unrefuted and credible, direct and specific, is sufficient to establish the facts testified without the need for any corroboration." (at 901).
Evidence/ Rejection by IJ. The IJ cannot reject offered evidence as being "self-serving" or "not written contemporaneously." (at 905).

Peru

Soto-Olarte v. Holder, 555 F.3d 1089 (9th Cir. 2009)
Miranda v. Gonzales, 441 F.3d 750 (9th Cir. 2006)
Canales-Vargas v. Gonzales, 441 F.3d 739 (9th Cir. 2006)
Cardenas v. INS, 294 F.3d 1062 (9th Cir. 2002)
Salazar-Paucar v. INS, 281 F.3d 1069 (9th Cir. 2002)
Cruz-Navarro v. INS, 232 F.3d 1024 (9th Cir. 2000)
Vera-Valera v. INS, 147 F.3d 1036 (9th Cir. 1998)
Velarde v. INS, 140 F.3d 1305 (9th Cir. 1998)
Meza-Manay v. INS, 139 F.3d 759 (9th Cir. 1998)
Gonzales-Neyra v. INS, 122 F.3d 1293 (9th Cir. 1997)

> ***Miranda v. Gonzales*, 441 F.3d 750 (9th Cir. 2006) (A72-136-241)**; upholding denial of asylum and withholding of removal on the basis that the respondent was found to be a "persecutor" under 8 U.S.C. § § 1158(b)(2)(A)(i) and 1231(b)(3)(B)(i); BERZON, concurrence by LEAVY.

Bars to Asylum/ Persecutor Bar, Found. Mr. Miranda had served as an interpreter during his service in the Peruvian Civil Guard. He received orders to assist other officers as such in their interrogation of individuals suspected of being associated with the Shining Path guerrilla organization. During many of these interrogations the suspects were subjected to brutal punishment in his presence. He performed this service "two to three times a month for seven years." He made clear "that he was unable to influence the torture." He stated that if he did not do as directed that "it would have affected his performance rating and he would not have been promoted." The opinion reviews a significant number of decisions. In making the determination it is appropriate to look at: "the length of time over which the person was involved in the acts, the kind of threats used to compel assistance, and the efforts or the lack thereof...to escape." "This statute does not require actual trigger pulling... but mere acquiescence or membership in an organization is insufficient to satisfy the persecutor exception." There is a need to distinguish "between active and passive conduct." *Laipenieks v. INS*, 750 F.2d 1427 (9th Cir. 1985) is limited so as not to require "a persecutor to personally inflict injury." Thus, individuals are only ineligible for asylum if they have provided purposeful, material assistance for the acts of persecution. The touchstone of the "assistance" analysis is the degree to which the applicant's conduct was central, or integral, to the relevant persecutory acts. The panel agreed with the IJ's assessment that the respondent was "a necessary part of the interrogation" or as otherwise stated, "he performed an integral role in facilitating the persecution." There was no claim of acting in "self defense" as in *Vukmirovic v. Ashcroft*, 362 F.3d 1247 (9th Cir. 2004) where the persecutor bar was not applied. The panel found the conduct in this case to be "at a margin of the culpability required under the statute." It notes, "Miranda was not in a position of authority, ...he did not apply the electric shock or beatings, he did not apply the physical compulsion, ...he did not... arrest the victims or bring them to the place of torture."

Persecution/ Threats; Property Damage. As a result of his service in the Peruvian Civil Guard, he received various threats from the Shining Path and his "wife and children had been visited by masked men who stole his police uniforms and painted or posted Shining Path slogans on the walls." When he thereafter relocated his wife and children, they made further threats, vandalized his property and poisoned his dog. There was no issue of credibility.

Administrative Proceedings/ No Chevron Deference. The panel engaged in a lengthy discussion that in the words of the concurrence was "irrelevant" in holding that there is no *Chevron*deference to any conclusion of law by an IJ even when the Board affirms without opinion. "An IJ decision, although presented as the final agency determination to be reviewed in federal court, is not legally relevant to any future decision-making including by the very IJ who issued it."

Board of Immigration Appeals/ Inconsistent Administrative Decisions. "Inconsistent results can...implicate constitutional concerns. Citing to *Njuguna v. Ashcroft*, 374 F.3d 765, 771 (9th Cir. 2004) ("it is a foundation of the rule of law that similarly situated individuals be treated similarly"; criticizing inconsistent treatment of asylum applicants) or *Wang v. Ashcroft*, 341 F.3d 1015, 1019 (9th Cir. 2003) rejecting a denial of asylum for a woman after noting that her husband had been granted such. It is noted that the inconsistencies cited were in unpublished administrative decisions.

Nexus/ Mixed Motive; Persecution/ Prosecution. The fact that the authorities were trying to control a violent terrorist group did not mean that their conduct could be excused. "By legitimate our case law refers to a persecution that was not tainted **even in part** [emphasis in original] by impermissible motives corresponding to a ground under the INA. Citing to *Borja v. INS*, 175 F.3d 732, 736 (9th Cir. en banc 1999).

Civil Strife/ Claims Arising in Context Of. The fact that there was general violence in Peru was also found not to justify the conduct. Again the court cited case law to support the position that "persecution occurred at least in part as a result of an applicant's protected status." *Ndom v. Ashcroft*, 384 F.3d 743, 755 (9th Cir. 2004); *Briones v. INS*, 175 F.3d 727, 729 (9th Cir. 1999 en banc); *Gomez-Saballos v. INS*, 79 F.3d 912, 917 (9th Cir. 1996). The panel held, "engaging in military actions, the attacking of garrisons, the burning of cars, and the destruction of other property as actions outside the limits of the term persecution... unlike the sort of on-the-battlefield conflict... torturing individuals selected for their affiliation with an opposition group is not inherent in armed conflict."

> ***Cruz-Navarro v. INS*, 232 F.3d 1024 (9th Cir. 2000) (A70-154-353)**; upholding denial of asylum; (1) applicant's persecution was not "on account of" his membership in protected social group; (2) his persecution was not "on account of" affirmative political opinion; and (3) his persecution was not "on account of" implied political opinion; petition denied; TASHIMA.

Nexus/ Motive Not Found; Protected Grounds/ Political Opinion, Not Found. Persecution of Peruvian police officer by suspected members of guerilla organization was not "on account of" officer's affirmative political opinion; officer did not testify that he had particular political beliefs or opinions, he did not choose to work on cases involving arrest of guerillas, and he did not testify that he expressed any political beliefs to his persecutors.

Nexus/ Motive Not Found; Protected Grounds/ Imputed Political Opinion, Not Found. Persecution of Peruvian police officer by suspected members of guerilla organization was not "on account of" imputed political opinion; guerillas referred to officer as "policeman" and "informer" when attacking him, and neither reference implied they believed he held political beliefs contrary to theirs. "While the guerillas may have regarded Cruz as an informant, this is not akin to imputing a political belief to him. *See* [*Sangha v. INS*, 103 F.3d 1482, 1489–90 (9th Cir. 1997)] (holding that applicant failed to establish imputed political opinion where he presented no evidence that an anti-governmental guerilla group imputed his father's political beliefs to him)." (at 1030).

***Soto-Olarte v. Holder*, 555 F.3d 1089 (9th Cir. 2009)(A97-875-480);** reversing and remanding a claim based on what was found to be an impermissible adverse credibility determination. A police report heavily relied upon by the respondent had material inconsistencies with the testimony. GOULD.

Credibility/ Inconsistencies, Material; Opportunity to Explain. In order to sustain an adverse credibility determination there must be shown to exist a material inconsistency, the alien must have been given the opportunity to explain such, and the IJ must give reasonable "reasons for finding that explanation unpersuasive."

Credibility/ Adverse Determination to Deny Claim. The administrative determination was also based on an alternate finding that the key incident complained of was a "robbery" unconnected to a protected ground for relief. This was not accepted in that "its explicit reasoning relied on an adverse credibility determination that we have determined is not supported by substantial evidence."

***Canales-Vargas v. Gonzales*, 441 F.3d 739 (9th Cir. 2006) (A72-136-915)**; reversing and remanding a denial of asylum. The respondent reported a series of threats in 1990 from the Shining Path after "she gave a speech denouncing the terrorist group." The panel did not find past persecution; PREGERSON; (KOZINSKI, dissenting, criticizing the "majority in interfering yet again with the IJs to do their jobs" and "The majority's opinion can only be read to announce a per se rule that any death threat from a group capable of carrying through on it requires a finding that the petitioner's fear of persecution is well founded.").

Well-Founded Fear/ Ten Percent Rule. In a graphic example of how easy it is under Ninth Circuit case law to establish the "low standard" of the ten percent chance of future risk, the majority was not willing to uphold the denial by the "age of the threats, " their anonymity, nor by the fact that there was no claim that there had been any effort by the Shining Path to "personally confront or physically harm" her nor by the "seven months" she remained in Peru.

Persecution/ Threats Alone. "In asylum and withholding of deportation cases we have consistently held that death threats alone can constitute persecution." Citing *Navas v. INS*, 217 F.3d 646, 658 (9th Cir. 2000), *Mashiri v. Ashcroft*, 383 F.3d 1112, 1119 (9th Cir. 2004), and twelve other Ninth Circuit cases. The Ninth Circuit found the Shining Path to have "ruthless efficiency in persecuting its political opponents" and that "it remains a terrorist group involved in numerous human rights abuses." In doing so it did not rely on information more current than from 1995.

Withholding of Deportation/ Denied. The Ninth Circuit upheld the denial on this request. It emphasized the difference in terms of evidentiary burden between the well founded fear standard and this request.

Ineffective Assistance of Counsel/ Ineffective Assistance Found. The respondent's attorney had "cut and pasted into the brief" a portion of a prior brief that was not at all relevant to this case. "Of course we do not hold the sloppiness of [respondent's] attorney against [respondent] herself."

> ***Cardenas v. INS*, 294 F.3d 1062 (9th Cir. 2002) (A70-925-268)**; reversing denial of asylum and withholding, and remanding; REINHARDT; (GRABER, dissenting, agreed with the BIA that internal relocation was reasonable: "The majority relies on a single telephone message to support its conclusion that the record *compels* a finding that Petitioner had a well-founded fear of future persecution, despite the absence of past persecution." (at 1068)).

Past Persecution/ Internal Relocation Possible; Country Reports, Use Of Permitted. When viewed in the light of the past threats made against him by terrorist organization actively engaged in political persecution (Shining Path), final threat that asylum applicant would not be safe anywhere in Peru necessitated a finding of a well-founded fear of persecution; that applicant was able to relocate within country for six months prior to receiving the final threat did not militate against such finding, particularly in light of State Department report of organization's extensive and ongoing impact.

Persecution/ Threats; Withholding of Deportation/ Granted. Alien was entitled to withholding of deportation upon showing of a well-founded fear of future persecution, and that it was more likely than not that he would be persecuted if he were to return to Peru, because he had received a direct threat from a terrorist organization that was actively engaged in political persecution.

Well-Founded Fear/ Continued Applicant Presence. "[T]hat Cardenas was able to live in Canete for six months prior to receiving the final threat does not affect our conclusion. We have found that a 'post-threat harmless period' of far longer than that did not vanquish an asylum claim. In *Lim* [*v. INS*, 224 F.3d 929, 935 (9th Cir. 2000)], the petitioner, who claimed asylum on the basis of persecution in the Philippines, was able to live in the country without harm for six years after receiving a series of death threats, yet we found that Lim established a well-founded fear of persecution. 224 F.3d at 935. Here, Cardenas was able to relocate for only six months before he received a threat in which the Shining Path asserted that his relocation would be no obstacle to their harming him. Certainly, this would establish that it would be neither safe nor reasonable for him to relocate within the country." (at 1067).

Salazar-Paucar v. INS, **281 F.3d 1069 (9th Cir. 2002) (***amended on denial of reh'g by* **290 F.3d 964 (9th Cir. 2002)**; reversing denial of asylum and withholding; remanding for a grant of asylum and withholding; PAEZ.

Persecution/ Threats; Of Family. Death threats by the Shining Path guerrillas in Peru, combined with the harm to members of applicant's family and the murders of his political counterparts constituted past persecution.

Past Persecution/ Failure to Rebut; Past Persecution/ Changed Conditions Not Found. INS failed to rebut presumption of a well-found fear of persecution arising from proof that asylum applicant received death threats from the Shining Path guerrillas in Peru; it was nothing but speculation that Shining Path were no longer interested in applicant because seven years had passed since applicant left Peru, six of which were due to the administrative delay in ruling on applicant's asylum claim.

Vera-Valera v. INS, **147 F.3d 1036 (9th Cir. 1998) (***withdrawing and superseding* **123 F.3d 1302 (9th Cir. 1997)** ***on reh'g***); reversing denial of asylum based on imputed political opinion; SCHROEDER; (KLEINFELD, concurring, found an actual political opinion rather than an imputed one).

Protected Grounds/ Political Opinion, Found. Threats made by members of Sendero Luminoso guerilla organization against alien while he served as president of Peruvian street vendors' cooperative, arising from his support of construction of permanent building for vending, were on account of imputed political opinion, and thus were basis for refugee status; Sendero Luminoso opposed construction project, and government supported such project, because the presence of street vendors facilitated guerillas' ability to hide and disseminate political information.

Protected Grounds/ Imputed Political Opinion, Found. "Imputed political opinion exists where one party to a conflict insists to the victim that the victim is aligned with the other side." (at 1039).

Velarde v. INS, **140 F.3d 1305 (9th Cir. 1998) (A72-542-391)**; reversing denial of withholding and remanding; alien's claim "is no less compelling than other successful claims brought by former police and army officials . . . and by other former holders of 'politically-charged' positions;" B.FLETCHER; review of discretionary determinations superseded by IIRIRA, accord *Falcon-Carriche v. Ashcroft*, 350 F.3d 845, 854 n.9 (9th Cir. 2003).

Withholding of Deportation/ Granted. Finding of BIA, that alien failed to demonstrate threatened harm based on political opinion or imputed political opinion upon being returned to Peru, and that she thus was not entitled to withholding of deportation, was not supported by

substantial evidence; alien testified that, because she was former bodyguard to daughters of Peru's president, she had received package bomb, had been victim of kidnap attempt, and had been threatened by Shining Path guerilla organization.

Protected Grounds/ Imputed Political Opinion, Found. "Velarde's claim of likely persecution by Sendero Luminoso on account of her imputed political opinion as a former security guard for the Presidential family is no less compelling than other successful claims brought by former police and army officials, *see* *Artiga Turcios*, 829 F.2d 720, 724 (9th Cir. 1987) (directing the BIA to grant withholding of deportation to former soldier based on clear probability of persecution on account of imputed political opinion by guerrillas in El Salvador); *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1287–88 (9th Cir. 1984) (same), and by other former holders of 'politically-charged' positions, *see* *Gomez-Saballos v. INS*, 79 F.3d 912, 918 (9th Cir. 1996) (directing the BIA to grant withholding of deportation to former prison director based on clear probability of persecution on account of imputed political opinion by guerrillas in Nicaragua). Accordingly, we conclude that the BIA's decision not to withhold deportation lacks the support of substantial evidence." (at 1313).

***Meza-Manay v. INS*, 139 F.3d 759 (9th Cir. 1998) (A93-140-152)**; reversing denial of asylum and remanding; (1) alien was persecuted by Shining Path guerilla organization on account of actual or imputed political opinion, and (2) that alien had been divorced from her husband and that he no longer worked for police force was insufficient to overcome presumption that alien had well-founded fear of persecution; PREGERSON; *distinguished by* *Belayneh v. INS*, 213 F.3d 488 (9th Cir. 2000).

Protected Grounds/ Political Opinion, Found; Imputed Political Opinion, Found; Persecution/ Of Family; Property Damage. Alien was persecuted in Peru on account of actual or imputed political opinion; alien opposed Shining Path guerilla movement because of its communist principles, friends and co-workers referred to her as a spy because of her husband's role in capturing guerilla leaders, and Shining Path attempted to kill her on two occasions, attempted to kill her children, bombed her in-laws' home, and abducted and killed her husband's brother.

Past Persecution/ Failure to Rebut. That alien was being divorced from her husband and that he no longer worked for police force was insufficient to overcome presumption that alien had well-founded fear of persecution upon return to Peru, where her husband had been victim of violent attacks by Shining Path guerilla movement; alien was personally targeted for her own political beliefs, and her divorce would not alter her own political opinions or her alleged status as spy for Peruvian government.

***Gonzales-Neyra v. INS*, 122 F.3d 1293 (9th Cir. 1997) (*as amended by* 133 F.3d 726 (9th Cir. 1998) (A72-124-436)**; reversing denial of asylum and withholding; remanded; SCHROEDER.

Protected Grounds/ Political Opinion, Found; Persecution/ Extortion. Alien established he was persecuted on account of political opinion, in view of guerillas' threats to alien's business and

his life after they learned of his political opposition to guerrillas' cause; fact that guerillas' initial extortion demands had economic motivation was not dispositive.
Nexus/ Motive Found. "[Applicant] provided evidence that he was persecuted, that he had a political opinion, that he expressed it to his persecutors, and that they threatened him only after he expressed his opinion. We therefore conclude that petitioner proved through compelling and undisputed evidence that the threats to his life and business constituted persecution causally connected to his political opposition to the Shining Path." (at 1296).

Philippines

Soriano v. Holder, 569 F.3d 1162 (9th Cir. 2009)
Silaya v. Mukasey, 524 F.3d 1066 (9th Cir. 2008)
Rivera v. Mukasey, 508 F.3d 1271 (9th Cir. 2007)
Marcos v. Gonzales, 410 F.3d 1112 (9th Cir. 2005)
Deloso v. Ashcroft, 393 F.3d 858 (9th Cir. 2005)
Mendoza Manimbao v. Ashcroft, 329 F.3d 655 (9th Cir. 2003)
Mejia v. Ashcroft, 298 F.3d 873 (9th Cir. 2002)
Valderrama v. INS, 260 F.3d 1083 (9th Cir. 2001)
Ochave v. INS, 254 F.3d 859 (9th Cir. 2001)
Pondoc Hernaez v. INS, 244 F.3d 752 (9th Cir. 2001)
Agbuya v. INS, 241 F.3d 1224 (9th Cir. 2001)
Lim v. INS, 224 F.3d 929 (9th Cir. 2000)
Colmenar v. INS, 210 F.3d 967 (9th Cir. 2000)
Grava v. INS, 205 F.3d 1177 (9th Cir. 2000)
Tarubac v. INS, 182 F.3d 1114 (9th Cir. 1999)
Borja v. INS, 175 F.3d 732 (9th Cir. 1999)
Briones v. INS, 175 F.3d 727 (9th Cir. 1999)
Garrovillas v. INS, 156 F.3d 1010 (9th Cir. 1998)

***Soriano v. Holder*, 569 F.3d 1162 (9th Cir. 2009)(A77-300-502)**; affirming a denial of relief primarily on the claim that "government informants" should not be deemed to be members of a PSG. Credibility was not at issue. Respondent did not claim any physical violence. He reported fear on the basis that he had been a member of a criminal gang and

informed on them in return for lenient treatment from the criminal justice authorities. He asserted that gang members had already been "looking for him" and wanted to know "when he would be deported." GRABER.

Protected Grounds/ Imputed Political Opinion, Not Found. The court would not find any imputed political opinion notwithstanding the respondent having acted against the criminal gang. The "fear of future persecution stems from the criminals' motive to retaliate against him for informing on them. Personal animosity is not a political opinion."

Protected Grounds/ PSG/Informant. The court founds the proposed ground not to be sufficiently "cohesive, homogenous" nor to have any "innate characteristic which is so fundamental to the identities or consciences of government informants that identifies them as a PSG."

***Rivera v. Mukasey*, 508 F.3d 1271 (9th Cir. 2007) (A70-830-630)**; affirming a denial of asylum and related relief on credibility grounds. The respondent complained of persecution. A first merits hearing was held in 1997. On appeal, the Board found that she had received ineffective assistance of counsel and remanded for another hearing. The second merits hearing was held in 2004 and again resulted in a denial of relief. BEEZER**.**

Credibility/ Inconsistencies, Material; Translation. "The IJ determined that Rivera's testimony was not credible because of the numerous inconsistencies between her 1997 and 2004 testimony." (at 1274). This was so notwithstanding that "Rivera attempted to explain why her 1997 testimony had been inaccurate, stating that she was confused, scared, nervous, and uncomfortable with her attorney." (at 1274). In upholding the administrative decision, the court held: "Neither lack of attorney preparation nor lack of a translator at Rivera's 1997 hearing prevented the IJ from considering Rivera's prior testimony at the 2004 hearing because the basis of the remand did not call into question the reliability of Rivera's testimony or the reliability of the transcript." (at 1275). Hence, "[t]heseinconsistencies, particularly when viewed cumulatively, deprive her claim of the requisite ring of truth. *Kaur v. Gonzales*, 418 F.3d 1061, 1067 (9th Cir. 2005)." (at 1275). (internal quotation marks omitted).

Due Process/ IJ Bias, Not Found. The court found no due process violation in the IJ's statement that the respondent, "has used every means of staying in the U.S. during the past eight years. The court has no greater reason to believe her today than it had to believe her when she testified in 1997." (at 1274).

Voluntary Departure/ Delay. In discussing the time to be provided for voluntary departure, the court comments: "The ability to delay finality over an issue such as voluntary departure illustrates an institutional failing in these asylum cases. By petitioning the Ninth Circuit for review, an undocumented alien greatly expands an illegitimate stay in the U.S. The Ninth Circuit is failing to undertake "appropriate analysis" in terms of whether to grant a stay of removal. (at 1278). "Whether borne out of the perceived efficiency of such summary grants [stays of removal] or out of compassion for the petitioners, the policy may be at least partly responsible for the enormous backlog of immigration cases in our circuit." (at 1278).

Valderrama v. INS, **260 F.3d 1083 (9th Cir. 2001) (A70-551-853)**; upholding adverse credibility determination; petition denied; PREGERSON, FERNANDEZ, and GRABER; (PREGERSON, concurring and dissenting in part, agreed with the adverse credibility finding but urged staying the mandate to allow BIA to fully consider a motion to reopen based on marriage to a USC).

Credibility/ Inconsistencies, Material. Alien's first and second petitions for asylum differed in a material way, and discrepancy went to heart of alien's claim that she was persecuted on account of her political opinion. The first application indicated she had never been a member of a political group, whereas her second application stated she had been a member of an anti-Communist group.

Ochave v. INS, **254 F.3d 859 (9th Cir. 2001) (A70-945-061)**; upholding denial of asylum based on internal relocation and lack of a nexus between persecution and imputed political opinion; petition denied; GRABER; (PREGERSON, dissenting, found that the IJ's "multiple, sua sponte objections to [alien]'s counsel's open-ended questions as 'leading; and his sustaining similar objections from the INS attorney effectively frustrated [alien]'s ability 'to present directly, or fully detail, her account supporting her claim for asylum.'").

Nexus/ Motive Not Found; Persecution/ Generalized Violence. Although applicant's father held position as Municipal Counselor, there was no evidence that guerillas knew who her father was at time of rape, and applicant testified that guerillas raped others as well and that attack might have been random act of violence.

Evidence/ Testimony, Exclusion Of. IJ did not err in directing Filipino asylum applicant, who claimed that Marxist guerillas raped her because her father held office of Municipal Counselor, not to answer leading question as to whether any mention of her father occurred during rape, inasmuch as she had several opportunities to testify about what rapists said and to explain why she believed that rape was on account of imputed political opinion.

Past Persecution/ Internal Relocation Possible; Well-Founded Fear/ Continued Applicant Presence. Substantial evidence supported finding that Filipino applicant was not entitled to asylum because she and her children moved from small town to Manila after she was raped by Marxist guerillas, and that they lived there without incident for nearly a year before applicant came to United States.

Protected Grounds/ Imputed Political Opinion, Not Found. "The only evidence of imputed political opinion in this case is the statement, from Felicitas' application, that 'my family was viewed as being reactionary in the Marxist eyes of the Communist guerrillas.' Accepting that statement as true, there remains an insurmountable difficulty for Petitioners: There is no evidence to suggest that the rapists knew who Felicitas was—much less that they knew who her father was—at the time they raped her and her daughter. The uncontroverted evidence is that: (1) Felicitas never had seen the rapists before the attack; (2) the rapists did not identify her by name; (3) the rapists did not mention her father or any other member of her family or refer to politics, even obliquely, before, during, or after the rape; (3) the rapists were not from her town;

(4) the rape took place outdoors, on the way back from the market, rather than in a place (like Petitioners' home or place of work) that would suggest that the rapists were seeking Felicitas and her daughter specifically; (5) the rapists routinely came down from the mountains at dusk and 'harass[ed] people, ' and rapes by guerrillas happened to 'a lot of people'; and (6) the guerrillas did not continue to harass Felicitas after the rape, or communicate with her in any way, so as to suggest that this was a purposeful attack with a political motive, rather than a despicable act of unmotivated violence against a stranger." (at 865–66).

Nexus/ Motive Not Found. "Whether or not the guerrillas in the New People's Army believed, as a general matter, that the family of a Municipal Counselor was reactionary, the fact remains that there is nothing in this record even to hint that the rapists knew, at the time of the rape, that Felicitas and her daughter were members of that reactionary family. By contrast, in cases in which this court has found that rapes occurred 'on account of' an imputed political opinion, the evidence was clear that the rapists (1) knew the specific identity of their victims; and (2) imputed political opinions to those victims. For example, in *Lopez-Galarza*, the victim's neighbor accused her of 'supporting the counter- revolutionary contras'; as a result, she was arrested, imprisoned, and raped. 99 F.3d at 957. In *Lazo-Majano v. INS*, 813 F.2d 1432, 1433 (9th Cir. 1987), overruled on other grounds by *Fisher v. INS*, 79 F.3d 955 (9th Cir. 1996) (en banc), the victim worked for the rapist, 'who had known her since childhood, ' and the rapist stated during the rape that the attack was on account of the political activities of the victim's husband." (at 866).

Persecution/ Rape; Generalized Violence. "As our previous cases illustrate, in order to impute a political opinion to his victim on account of her family's activities, a rapist necessarily must have some idea who the victim is. That crucial fact—which is a logical predicate to Felicitas' entire claim—is not established anywhere in this record, including her application." (at 866).

***Pondoc Hernaez v. INS*, 244 F.3d 752 (9th Cir. 2001) (A28-695-188)**; upholding denials of motion to remand and motion to reopen, finding the evidence presented was available at the time of the prior proceedings; petition denied; PAEZ; *declined to extend by Lopez-Molina v. Ashcroft*, 368 F.3d 1206 (9th Cir. 2004).

Motion to Reopen/ No New Evidence. Alien was not entitled to reopen removal proceeding for consideration of his application for asylum and withholding of deportation since the documentation he presented was the same evidence he used in support of his earlier motion to remand and there was no reason he could not have raised his asylum claim at the time of his initial hearing or at the time of the motion to remand. "Since at least 1990, two years before the present deportation proceedings were instituted, it has been clear that the petitioner's sexual orientation can form the basis of an asylum claim." (at 758 (citing *Matter of Toboso-Alfonso*, 20 I&N Dec. 819, 820–23 (BIA 1990))).

***Silaya v. Mukasey*, 524 F.3d 1066 (9th Cir. 2008) (A71-952-683)**; reversing and remanding a claim based on asserted persecution at the hands of the New People's Army. The respondent claimed mistreatment from the events of 1982. The respondent had come to the U.S. in 1985. The IJ found her incredible. The IJ further found that even if the misconduct had occurred, it was not sufficiently linked to a protected ground and that the respondent could be reasonably expected to relocate to a different area. The Board found her credible, but otherwise sustained the denial. TROTT.

Persecution/ Rape; Protected Grounds/ Political Opinion, Found; Nexus/ Motive Found. In reversing the administrative denial, the court cited to *Kebede v. Ashcroft*, 366 F.3d 808, 812 (9th Cir. 2004): "[E]vidence that the alleged persecutor acted because of a petitioner's family's political associations is sufficient to satisfy the motive requirement." (at 1070-71). The court distinguished *Ochave v. I.N.S.*, 254 F.3d 859, 862 (9th Cir. 2001). There, the court denied relief. "[W]e concluded that there was no evidence that the rapists knew who petitioner and her daughter were, let alone who petitioner's father was." (at 1071). Here, the "NPA members knew who she was, knew who he father was, and made comments indicating that Rosalina was chosen as a victim because of her father's ties to the Philippine" government (at 1072).

***Marcos v. Gonzales*, 410 F.3d 1112 (9th Cir. 2005) (A46-012-583);** general and specific death threats from NPA against Civilian Home Defense Forces volunteer radio operator made his fear of persecution reasonable, even though there was no attempt to act on the threats and the threats decreased over time; upholding IJ's finding of no past persecution, but reversing adverse credibility ruling and finding a well-founded fear of future persecution; remanding for asylum, withholding and CAT eligibility determinations; PAEZ; (GRABER, dissenting, found that past fraud provided legitimate basis to require corroborating evidence).

Credibility/ False Statements. The Ninth Circuit has "drawn a clear distinction between 'false statements made to establish the critical elements of the asylum claim [and] false statements made to evade [immigration] officials.'... the underlying motive is not determinative." (at 1117, citing *Akinmade v. INS*, 196 F.3d 951, 956 (9th Cir. 1999)). "In *Turcios*, we noted that '[u]ntrue statements by themselves are not reason for refusal of refugee status and it is the examiner's responsibility to evaluate such statements in the light of all the circumstances of the case.'" (at 1118, citing *Turcios v. INS*, 821 F.2d 1396, 1400 (9th Cir. 1987)). "[F]ear cannot be a requirement, " and alien's "inadvertent failure to disclose [the death of the petitioning relative in the consular interview] therefore has little bearing on his credibility, " (at 1117), even though alien had an affirmative duty to disclose the death of his petitioning relative.

Persecution/ Threats, Unfulfilled. That threats are unfulfilled does not render the fear unreasonable. "'What matters is whether the group making the threat has the will or ability to carry it out.' *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1285 (9th Cir. 1984) (cited in *Kaiser [v. Ashcroft*, 390 F.3d 653, 658–59 (9th Cir. 2004)]. The NPA had both the will and the ability here. *See Briones v. INS*, 175 F.3d 727, 729 (9th Cir. 1999) (en banc)." (at 1119).

Past Persecution/ Individualized Analysis. "[W]hile other excerpts of the Country Report cite changing conditions and decreasing NPA power, the IJ did not make any individualized determination whether the changed conditions reported in the Country Report will affect [the

alien]'s specific situation... An 'individualized analysis' is *required* in this circuit..." (at 1121, citing *Borja v. INS*, 175 F.3d 732, 738 (9th Cir. 1999) (en banc), and *Garrovillas v. INS*, 156 F.3d 1010, 1017 (9th Cir. 1998)).

***Deloso v. Ashcroft*, 393 F.3d 858 (9th Cir. 2005) (A70-778-153)**; reversing denial of asylum and withholding upon finding persecution on account of political opinion; remanding for a grant of withholding and discretionary grant of asylum; FISHER; *amending and superceding* 378 F.3d 907 (9th Cir. Aug. 2, 2004) *on denial of reh'g*.

Nexus/ Motive Found. Persecution was motivated at least in part by alien's political opinions, where attacks on him began after he spoke in support of his father's run for town councilor in opposition to Communist party, likely instigator was hit man for Communist party, and hammer-and-sickle emblems were left at sites of some attacks indicating that Communist party was accepting responsibility.

Evidence/ Authentication, Inability To. "We recognize that document fraud from Filipino asylum applicants is 'common.' State Department, 1997 Profile of Asylum Claims and Country Conditions for the Philippines ('To support [their] claims applicants sometimes submit statements from police or government officials asserting they are unable to protect claimants, and advising them to leave the Philippines. Venality and document fraud are common and adjudicators should exercise care in evaluating the authenticity of such evidence.'). We nonetheless accept these documents as authentic in the absence of any finding to the contrary by the IJ." (at 865, n.3).

***Mendoza Manimbao v. Ashcroft*, 329 F.3d 655 (9th Cir. 2003) (A70-184-349)**; remanding upon finding IJ made no adverse credibility finding and alien was not given notice that his credibility was at issue before the BIA; WARDLAW; (TROTT, dissenting, found sufficient notice within IJ's decision that alien's testimony was not sufficiently plausible).

Credibility/ Articulable Basis. Although court accords substantial deference to an IJ's credibility finding, court will do so only if the IJ has made an express credibility finding and has offered a specific, cogent reason for any stated disbelief; IJ must not only articulate the basis for a negative credibility finding, but those reasons must be substantial and bear a legitimate nexus to the finding.

Credibility/ Explicit Finding. When IJ makes implicit credibility observations in passing, that does not constitute a credibility finding. "Here, the IJ neither found Petitioner credible nor remained completely silent as to his credibility. Instead, as in *Aguilera-Cota v. INS*, 914 F.2d at 1381, the IJ found Manimbao's testimony alone insufficient to establish his burden of proof for his asylum claim, presumably because it found him less than credible. However, as we have previously held, credibility findings must be supported by specific, cogent reasons that are substantial and bear a legitimate nexus to the determination that the petitioner did not meet his burden of establishing eligibility for asylum and deportation. *See Chebchoub v. INS*, 257 F.3d 1038, 1043 (9th Cir. 2001); *Osorio v. INS*, 99 F.3d 928, 931 (9th Cir. 1996). Minor inconsistencies in

the record that do not relate to the basis of an applicant's alleged fear of persecution, go to the heart of the asylum claim, or reveal anything about an asylum applicant's fear for his safety are insufficient to support an adverse credibility finding. *See* Chebchoub, 257 F.3d at 1043; Shah v. INS, 220 F.3d 1062, 1068 (9th Cir. 2000); *see also* de Leon-Barrios v. INS, 116 F.3d 391, 393 (9th Cir. 1997) ("Generally, minor inconsistencies and minor omissions relating to unimportant facts will not support an adverse credibility finding."). Therefore, a credibility observation made in passing does not constitute a credibility finding sufficient for review under the standards we have developed." (at 660).

Credibility/ Inconsistencies, Minor. Minor inconsistencies in the record that do not relate to the basis of an asylum applicant's alleged fear of persecution, go to the heart of the asylum claim, or reveal anything about an asylum applicant's fear for his safety are insufficient to support an adverse credibility finding.

***Mejia v. Ashcroft*, 298 F.3d 873 (9th Cir. 2002)**; reversing BIA's denial of motion to reopen and remanding upon finding alien was prima facie eligible for asylum; BERZON.

Motion to Reopen/ Changed Circumstances. Alien was prima facie eligible for asylum, where his unchallenged testimony demonstrated that he appeared on New People's Army (NPA) hit list in the Philippines after he had acted as informer against NPA. "Taking a shell-game like approach, the BIA neither considered whether Mejia had a well-founded fear of persecution on account of imputed opinion nor considered the new evidence regarding the broad scope and unlikely containment of the NPA threat." (at 879).

***Agbuya v. INS*, 241 F.3d 1224 (9th Cir. 2001) (A70-541-362)**; reversing BIA's finding of no past persecution, remanding for a grant of withholding and discretionary grant of asylum; B.FLETCHER; (HALL, dissenting: "The majority opinion in this case stretches the meaning of political persecution to cover those aliens who are persecuted on purely economic grounds. Because I believe that only congress has the authority to re-write our immigration laws in this manner, I dissent."); *amending* 219 F.3d 962 *on denial of reh'g*.

Persecution/ Kidnaping. Asylum applicant established politically motivated past persecution that gave rise to presumption of well-founded fear of future persecution, in view of evidence that applicant, who had taken actions as employee of mine that were perceived as anti-labor, was kidnaped and threatened based on her perceived support for the government and her perceived opposition to communist guerilla group.

Protected Grounds/ Imputed Political Opinion, Found. Where communist guerilla group in alien's home country viewed alien as an enemy of the communist cause, alien need not identify herself in this way to qualify for political asylum. "The dissent argues that Agbuya's persecution amounted to 'economically-motivated persecution.' Dissent at 3052. The dissent stresses that Agbuya did not make any political statements or consciously side with anyone in the struggle. As discussed above, such purported silence and neutrality does not decide the matter. Instead, we must look at how she was viewed in the eyes of the persecutors. Here, the

guerilla NPA viewed Agbuya as an enemy of the miners, the NPA, and the communist cause. Agbuya need not identify herself in this way to qualify for political asylum. She was abducted, falsely imprisoned for a week, hit, threatened with a gun, and told she would be tried in a kangaroo court because of a political opinion imputed to her by her persecutors. All of this happened after she left her job, indicating that the NPA was after Agbuya for what they perceived to be her political views. She was not, as the dissent indicates, persecuted because she was rich or middle class. Instead, she was persecuted, like so many refugees who seek safe haven in the United States, because she was identified as an opponent of communism. The BIA erred because its determination was not supported by reasonable, substantial, and probative evidence on the record considered as a whole. Agbuya is entitled to political refugee status." (at 1230).

Lim v. INS, **224 F.3d 929 (9th Cir. 2000) (A72-144-473)**; remanding for a discretionary grant of asylum; (1) petitioner sufficiently raised issues on appeal; (2) persecution risked by applicant was on account of imputed political opinion; (3) applicant's fear of future persecution was reasonable; (4) finding that threats against applicant did not constitute past persecution was supported by substantial evidence; and (5) applicant was not entitled to withholding of deportation, even though he was eligible for asylum; Respondent was never "confronted or physically harmed." (at 935). He was "an active opponent of a political group." GOODWIN; *distinguished by* *Ruano v. Ashcroft*, 301 F.3d 1155 (9th Cir. 2002).

Persecution/ Threats Alone; Threats, Unfulfilled. "Threats themselves are sometimes hollow and, while uniformly unpleasant, often do not effect significant actual suffering or harm. Furthermore, claims of threats are hard to disprove. A finding of past persecution raises a regulatory presumption of future persecution and flips the burden of proof to the INS to show that conditions have changed to such a degree that the inference is invalid. *See* *Surinder Singh v. Ilchert*, 69 F.3d 375, 379 (9th Cir. 1995). Flipping the burden of proof every time an asylum applicant claimed that he had been threatened would unduly handcuff the INS." (at 936). "Threats standing alone ... constitute past persecution in only a small category of cases, and only when the threats are so menacing as to cause significant actual 'suffering or harm.'" (at 936).

Withholding of Removal/ Denied. The court recognizes the significantly different evidentiary standards between asylum and withholding. *See also* *Barraza-Rivera v. INS*, 913 F.2d 1443 (9th Cir. 1990). "To require that asylum and withholding of deportation must always walk together would be to render the distinction between the two standards mere empty words." (at 938). *See also* *Gui v. Ashcroft*, 280 F.3d 1217 (9th Cir. 2002) (Alien found to have established past persecution, but a denial of withholding was upheld).

Nexus/ Retribution, On Account of Protected Ground. Persecution risked by alien in form of retaliation by New People's Army (NPA) in Philippines against him for testifying against NPA leaders was on account of imputed political opinion, not merely on account of personal revenge, inasmuch as threats were "revenge plus, " that is, revenge partly motivated by, and thus on account of, imputed adverse political opinion.

Well-Founded Fear/ Objectively Reasonable, Found. Alien's fear of future persecution by members of NPA in Philippines resulting from his testimony against NPA leaders was

reasonable; although applicant was not confronted or physically harmed, he was followed, he appeared on death list, and his colleagues who received similar threats were killed. Alien's exit from government police force in Philippines did not render his fear of future persecution arising from his testimony against leaders of NPA unreasonable; fact that he was followed and continued to receive threats after retirement confirmed that NPA did not forgive him when he retired.

Well-Founded Fear/ Continued Applicant Presence. Alien's failure to leave Philippines for six years after he received his first death threat from NPA did not render his fear of future persecution unreasonable; according to alien, his fear was not induced merely when he was first threatened but when his colleagues who had received similar threats were murdered and when he was followed.

Well-Founded Fear/ Continued Family Presence. Fact that asylum applicant's family remained safely in Philippines after he was threatened by NPA for testifying against NPA leaders did not render his fear of future persecution unreasonable; nothing in record supported inference that family's safety ensured that applicant would be safe, and his colleagues were killed despite lack of indication that their families were harmed.

Past Persecution/ Failure to Rebut. Evidence that NPA had weakened somewhat in Philippines did not render asylum applicant's fear of future persecution resulting from his testimony against NPA leaders unreasonable; NPA remained capable of killing its opponents. "In the context of the case before us, substantial evidence supports the BIA's finding that the threats here did not constitute past persecution, but better fit 'within that category of past experience more properly viewed as indicative of the danger of future persecution.' *Boykov*, 109 F.3d at 416. Neither Lim nor his family was ever touched, robbed, imprisoned, forcibly recruited, detained, interrogated, trespassed upon, or even closely confronted. That Lim carried on for six years without harm and without fleeing provides additional support for the BIA's finding that the threats here did not inflict sufficient 'suffering or harm' to compel a finding of past persecution. The threats to Lim were precisely that—threats of future harm." (at 936).

***Colmenar v. INS*, 210 F.3d 967 (9th Cir. 2000) (A70-193-463)**; remanding for a new hearing based on finding alien was prevented from presenting his claims in full; HAWKINS; *distinguished by* *Rostomian v. INS*, 210 F.3d 1088 (9th Cir. 2000).

Due Process/ Full and Fair Hearing; IJ Bias, Found. Filipino asylum applicant was denied full and fair hearing and reasonable opportunity to present evidence on his behalf, and thus was denied due process if prejudiced thereby, when IJ indicated at start of hearing that he had already judged claim, behaved as partisan adjudicator seeking to intimidate applicant and his counsel, refused to let applicant testify about who he believed had thrown Molotov cocktail at him despite circumstantial evidence linking incident to threatening letter allegedly from revolutionary group, and refused to let applicant testify about anything that was included in his written application. "We do not enjoy second-guessing the way Immigration Judges run their courtrooms. But when a petitioner has so clearly been denied a full and fair hearing, we have no choice. Judges do little to impress the world that this country is the last best hope for freedom by displaying the hard hand and closed mind of the forces asylum seekers are fleeing. Better that we hear these claims out fully and fairly and then make an informed judgment on the

merits. This is consistent with our role as judges, and the values of our Constitution demand no less." (at 973).

Evidence/ Testimony, Exclusion Of. Although alien's conclusory assertions by themselves were insufficient to support asylum claim, he stated in brief that if he had been allowed to testify he would have established that New People's Army (NPA) was motivated in attacking him by his political opinion.

Grava v. INS, **205 F.3d 1177 (9th Cir. 2000)**; reversing BIA's finding of no nexus between political opinion and feared persecution; remanding to determine whether fear was well-founded; (1) BIA could not refuse to consider written asylum application based on lack of stipulation that alien's oral testimony would be consistent with his written application, and (2) alien's failure to concomitantly espouse political theory while whistleblowing against allegedly corrupt government officials did not preclude finding that his whistleblowing was on account of political opinion; THOMAS.

Protected Grounds/ Political Opinion/Whistleblowing. Although whistleblowing against one's supervisors at work is not, as a matter of law, always an exercise of political opinion for purposes of an asylum application, where the whistle blows against corrupt government officials, it may constitute political activity sufficient to form the basis of persecution on account of political opinion. In determination whether asylum applicant's persecution for whistleblowing against allegedly corrupt government officials was on account of political opinion for purposes of asylum application, the salient question was whether whistleblowing was directed toward governing institution, or only against individuals whose corruption was aberrational.

Nexus/ Retribution, On Account of Protected Ground. Fact that Filipino law enforcement officer failed to concomitantly espouse political theory while whistleblowing against allegedly corrupt government officials did not compel finding that his persecution was matter of personal retaliation rather than on account of political opinion for purposes of asylum application.

Nexus/ Mixed Motive. When the alleged corruption that is the subject of an alien's whistleblowing is inextricably intertwined with governmental operation, the exposure and prosecution of such an abuse of public trust is necessarily on account of political activity for purposes of an asylum application. Although retaliation against a whistleblower by a government official completely untethered to a governmental system does not afford a basis for asylum, many persecutors have mixed motives, and, in such instances, personal retaliation against a vocal political opponent does not render the opposition any less political, or the opponent any less deserving of asylum.

Evidence/ Stipulation by Parties. The Board was reversed when it held that it could "disregard Grava's written application...and to require a stipulation by the parties that his oral testimony would be consistent with his written assertions. ... [A]n applicant need not testify on his own behalf ... and may rest on the application alone." (at 1180). The court rejected *Matter of Fefe*, 20 I&N Dec. 116 (BIA 1989), as being able to justify a different result. Other supportive case law includes: *Ochave v. INS*, 254 F.3d 859 (9th Cir. 2001) ("The IJ must consider evidence contained in [the] application for asylum. Testimony is not required; an applicant may rest on [his or] her application, if [he or] she swears at the hearing that the contents of the application are true."); *Zahedi v. INS*, 222 F.3d 1157, 1166 (9th Cir. 2000) ("The objective component of the claim is

complete, even without Zahedi's testimony."); *Agbuya v. INS*, 241 F.3d 1224 (9th Cir. 2001) (The case can be made on the basis of "documents or testimony."); *Kaur v. INS*, 237 F.3d 1098 (9th Cir. 2000) (The asylum seeker does not have to testify for a successful claim, as the Board was reversed upon finding that she had given up her right to asylum by "failing to testify.")

***Tarubac v. INS*, 182 F.3d 1114 (9th Cir. 1999) (A72-693-635)**; reversing BIA's denial of asylum and remanding for a discretionary grant of asylum; (1) alien's persecution was on account of her political opinion, and (2) country conditions had not changed sufficiently to render alien's fear of persecution no longer well-founded; B.FLETCHER.

Persecution/ Kidnaping; Physical Harm. Citizen of the Philippines suffered "persecution" within meaning of statute providing for asylum based on well-founded fear of persecution, when she was kidnaped, beaten, held for a period of days, and threatened with more violence by revolutionary group.

Nexus/ Mixed Motive. Alien's persecution by New People's Army (NPA) revolutionary group in the Philippines was at least in part because of her political opinion, even though NPA began recruiting her and demanding that she pay "revolutionary tax" before they knew her political views, where it was not until she told NPA of her opposition to communism that NPA operatives threatened her life, kidnaped her, beat her, held her without food, and pursued her to distant city.

Finding that persecution of alien was motivated by nonpolitical factors is largely irrelevant to an alien's eligibility for asylum, unless BIA finds substantial evidence that the only motivation for the persecution was nonpolitical.

Past Persecution/ Changed Conditions Not Found; Country Reports/ To Rebut Past Persecution, Insufficient. Profile issued by Department of State in 1995 was insufficient to establish that conditions in Philippines had changed so much since alien's persecution during the years 1986 through 1991 by New People's Army that her fear of persecution on account of her political beliefs was no longer well-founded, rendering her ineligible for asylum; although report stated there were "fewer" politically-related killings, it stated that NPA remained active and continued to engage in politically-related violence.

***Borja v. INS*, 175 F.3d 732 (9th Cir. 1999) (en banc) (A73-396-835)**; *reversing Matter of T-M-B-*, 21 I&N Dec. 779 (BIA 1997); finding past persecution on account of political opinion; presumption was not rebutted; remanding for a discretionary grant; TROTT; (O'SCANNLAIN and KLEINFELD, dissenting, argue the majority's review was de novo and not a correct application of the "compelled" test); *distinguished by Sebastian-Sebastian v. INS*, 195 F.3d 504 (9th Cir. 1999); *Kozulin v. INS*, 218 F.3d 1112 (9th Cir. 2000); viewed by REAL ID Act of 2005 Conference Committee as having "substantially undermined a proper analysis of mixed motive cases." H.R. CONF. REP. NO. 109-72, at 163 (2005).

Nexus/ Mixed Motive. Alien was subjected to persecution by anti-government faction in the Philippines, at least in part on account of her political opinion, and was thus eligible for asylum

in view of evidence that alien articulated her political opposition to faction representatives as reason for her refusal to join; faction's demands for money did not render persecution nonpolitical.

Past Persecution/ Changed Conditions Not Found; Country Reports/ To Rebut Past Persecution, Insufficient. State department profile of the Philippines was insufficient evidence of changed conditions and thus did not rebut presumption of future persecution that arose when alien established that she suffered from past persecution by anti-government faction in the Philippines on account of her political opinion; although profile suggested that faction had decreased presence, it did not negate alien's reason to fear death if she returned to the Philippines.

Withholding of Deportation/ Granted. Alien established a clear probability of persecution which entitled her to mandatory withholding of deportation, or "nonrefoulement, " as it was more likely than not that alien would be subject to persecution by anti-government faction in the Philippines on account of her political beliefs, in view of evidence that faction told alien she would die if she did not pay specified amount of money and evidence that faction's promises were not idle.

***Briones v. INS*, 175 F.3d 727 (9th Cir. 1999) (en banc) (A72-132-035)**; remanding for BIA to rule on IJ's adverse credibility determination; TROTT; (O'SCANNLAIN, dissenting, found that even if alien's testimony was credibly, it failed to establish persecution on account of political opinion, and the petition should be denied rather than remanded); *declined to extend by Lim v. INS*, 224 F.3d 929 (9th Cir. 2000); viewed by REAL ID Act of 2005 Conference Committee as having "substantially undermined a proper analysis of mixed motive cases." H.R. CONF. REP. NO. 109-72, at 163 (2005).

Protected Grounds/ Political Opinion, Found. Alleged death threats against alien by New Peoples Army (NPA) in the Philippines were on account of alien's political beliefs, where alien allegedly provided government with information leading to NPA's defeat in field, deaths of their combatants, and capture of one of their leaders, and record contained no reason why NPA would want to eliminate alien other than those alleged actions.

Civil Strife/ Claims Arising in Context Of. Despite the personal origins of a dispute, death threats by people on one side of a civil war against a person suspected of being on the other side constitutes persecution on account of political opinion for purposes of asylum claim.

***Garrovillas v. INS*, 156 F.3d 1010 (9th Cir. 1998) (A29-217-107)**; vacating denial of asylum and remanding for credibility determination and discretionary grant of asylum; (1) BIA's finding that alien was not credible was not supported by substantial evidence; (2) if credible, alien's testimony apparently established that he suffered past persecution in the Philippines on account of political opinion; and (3) to rebut presumption of well-founded fear of future persecution, government would have to make individualized showing of how changed conditions in the Philippines would affect alien's situation; REINHARDT; *not followed as dicta by Lim v. INS*, 224 F.3d 929 (9th Cir. 2000).

Credibility/ Articulable Basis. Finding of BIA that asylum applicant was not credible was not supported by substantial evidence, as applicant's inconsistent statements regarding whether he had been shot at likely stemmed from desire to tell the truth and correct earlier false statement for which applicant had explanation, BIA failed to specify examples of applicant's allegedly repeated refusals to answer questions directed to him at deportation hearing, and IJ acted with open, persistent hostility towards applicant.
Past Persecution/ Credible Testimony Sufficient. If credible, testimony of asylum applicant at deportation hearing apparently established that applicant suffered past persecution in the Philippines on account of political opinion, such that applicant was entitled to presumption of well-founded fear of future persecution, based on evidence that applicant served as informant for Philippine army and that applicant received death threats due to his involvement with army.

Romania

Cosa v. Mukasey, 543 F.3d 1066 (9th Cir. 2008)
Circu v. Gonzales, 450 F.3d 990 (9th Cir. 2006) (en banc)
Dinu v. Ashcroft, 372 F.3d 1041 (9th Cir. 2004)
Gui v. Ashcroft, 280 F.3d 1217 (9th Cir. 2002)
Andreiu v. Ashcroft, 253 F.3d 477 (9th Cir. 2001)
Marcu v. INS, 147 F.3d 1078 (9th Cir. 1998)

***Dinu v. Ashcroft*, 372 F.3d 1041 (9th Cir. 2004) (A72-175-532)**; upholding denial of asylum based on alien's failure to demonstrate prosecution was persecution on account of political opinion; After the fall of the communist government, alien was "beaten [, leaving a scar on his face,] and threatened with death" during a police interrogation. After his release, he was "rearrested and interrogated...nearly every month, " which he asserted was based on an imputed political opinion. (at 1043–44). His testimony was accepted as credible;

KOZINSKI; (THOMAS, dissenting, found sufficient evidence to support the presumption that the police investigation was in fact persecution on account of political opinion).

Nexus/ Motive Not Found. Neither the heavy-handed and drawn-out nature of Romanian police officer's investigation of alien who had served in the military under deposed communist regime for his possible involvement in shooting of civilians, nor the fact that alien credibly testified regarding his innocence from any participation in shootings, was sufficient to give rise to presumption that this investigation was mere pretext to persecute alien on account of his imputed political opinion, where alien failed to otherwise demonstrate that this investigation served no bona fide purpose.

Persecution/ Prosecution. "We certainly have never held that if police don't charge someone with a crime this will automatically raise a presumption of political persecution. The presumption arises only 'where there appears to be no other logical reason for the persecution at issue.' *Navas v. INS*, 217 F.3d 646, 657 (9th Cir. 2000) (citing *Sangha v. INS*, 103 F.3d 1482, 1490 (9th Cir. 1997))...The length of time an investigation is ongoing does not alone raise a presumption of political persecution, though protracted delay can certainly be taken into account. Nor is any other factor conclusive. The question is whether petitioner has borne his burden of showing that the purported criminal investigation had no bona fide objective, so that political persecution must have been the real reason for it." (at 1044). "[B]eing innocent provides no immunity from police investigation any more than being guilty justifies unsavory police tactics... So long as the police are trying to find evidence of criminal activity, neither the length of the investigation, nor the fact that they are pursuing suspects we believe to be innocent, nor the unsavoriness of their tactics, gives rise to an inference of political persecution." (at 1045).

***Andreiu v. Ashcroft*, 253 F.3d 477 (9th Cir. 2001) (en banc reh'g of 223 F.3d 1111 (9th Cir. 2001)) (A71-807-157)**; *finding IIRIRA did not strip the court of its power to issue a stay of removal, the court nevertheless found petitioner had not established eligibility; HAWKINS; (BEEZER, concurring, argues that the statutory standard should be applied rather than the court-created Abassi standard).*

Nexus/ Motive Not Found. *Evidence of a single 1991 attack by figures tenuously connected to the government, without evidence that the current Romanian government or its officials desire to do him harm, is insufficient to demonstrate a probability of success on the merits under Abassi v. INS, 143 F.3d 513 (9th Cir. 1998).*

***Marcu v. INS*, 147 F.3d 1078 (9th Cir. 1998) (A70-046-326) (cert denied, 526 U.S. 1087 (1999))**; *(1) finding that conditions in Romania had changed to such an extent that, even if alien was persecuted in past, he no longer had well-founded fear of being persecuted if he returned was sufficiently supported by evidence, and (2) determination of BIA not to grant asylum for humanitarian reasons alone, based on past persecution that applicant had allegedly suffered because of his mother's American citizenship, was not abuse of discretion; petition denied; WALLACE; (HAWKINS, dissenting, accuses the majority of omitting facts and downplaying many of the*

significant events in alien's life, which demonstrate past persecution); distinguished by Vongsakdy v. INS, 171 F.3d 1203 (9th Cir. 1999).

Past Persecution/ Changed Conditions Found; Country Reports/ To Rebut Past Persecution, Sufficient. *Finding that conditions in Romania had changed to such an extent that, even if alien was persecuted in past, he no longer had well-founded fear of being persecuted if he returned was sufficiently supported by country report prepared by Department of State and by analysis of conditions in Romania by one of the Department's directors, so as to prevent court of Appeals from disturbing determination of BIA that alien was ineligible for asylum based on any such well-founded fear of persecution.*

Past Persecution/ Humanitarian Asylum, Denied. *Determination of BIA not to grant asylum for humanitarian reasons alone, based on past persecution that Romanian national had allegedly suffered because of his mother's American citizenship, was not abuse of discretion, given the level of persecution alleged, which consisted of denial of educational opportunities, police interrogations and beatings, and frequent searches of his home.*

Cosa v. Mukasey, *543 F.3d 1066 (9th Cir. 2008)**;** reversing and remanding a claim based on religious persecution. Respondent claimed that she had been "harassed, beaten, and raped by Romanian police for practicing her Millenist faith." Denial was based on adverse credibility determination.*

Credibility/ Demeanor; IJ Speculation. *The court emphasized that the adverse credibility determination had been based on "speculation." The IJ's demeanor observations in terms of how the respondent dressed and "emote[d]" were rejected. "Non-evidence based on assumptions cannot support an adverse credibility determination without some evidence in the records, other than the IJ's bare personal view, we have no way of knowing whether the IJs speculations are simply conjecture or legitimate concerns bearing on an applicant's credibility"(citing to Lin v. Gonzales, 434 F.3d 1158, 1163 (9th Cir. 2006)).*

Credibility/ IJ Personal Knowledge*. The IJ relied on the minimal and inaccurate understanding demonstrated by the respondent as to her religion. The court rejected such and cited with approval to holdings from other circuits. "An IJ's personal beliefs or some perceived common knowledge about the religion are not a proper basis for an adverse credibility determination. Jiang v. Gonzales, 485 F.3d 992, 995 (7th Cir. 2007). "People can identify with a certain religion, notwithstanding their lack of detailed knowledge about the religion's doctrinal tenets and those same people can be persecuted because of their religious affiliation." Rizal v. Gonzales, 442 F.3d 84, 90 (2nd Cir. 2006). "We have cautioned IJs against using an applicant's ignorance of religious doctrine as evidence that an individual is not a true believer." Jiang v. Gonzales.*

Circu v. Gonzales, 450 F.3d 990 (9th Cir. 2006) (en banc) (A71-595-144)*; reversing and remanding the previous panel decision, 389 F.3d 938 (9th Cir. 2004), which had upheld the denial of relief; The panel decision had permitted the IJ's to take administrative notice of a Department of State Country Report that had been issued nineteen months after the asylum hearing to prove*

changed country conditions and defeat the claim of past persecution. En banc, the court held the IJ's reliance on the report improper because the report had not been presented to the respondent prior to its use. This report was found to have material differences from the report on record; CALLAHAN.

Due Process/ Notice of Evidence Considered. *"[D]ue process requires notice and an opportunity to respond before the IJ renders her decision."*

***Gui v. Ashcroft*, 280 F.3d 1217 (9th Cir. 2002) (A71-595-144)**; *reversing IJ's adverse credibility determination; presumption of future persecution was not rebutted; alien failed to satisfy more stringent eligibility requirements for withholding; remanding for a discretionary grant of asylum; B.FLETCHER.*

Credibility/ Articulable Basis. *IJ failed to provide a legitimate articulable basis for determination that alien's testimony that his family's telephone had been tapped in his native Romania for over 15 years was not credible; while IJ found it doubtful that someone who knew his telephone was tapped would discuss "incriminating" things, such a finding was tantamount to a belief that alien should have refrained from using telephone at all, and alien claimed only that interrogations by police led him to believe that they were eavesdropping, not that he had discussed incriminating matters. Reasons offered by IJ, including disbelief of alien's claims regarding tapping of his telephone, alleged intentional hit-and-run crashes in which he was targeted, and fact that allegedly repressive Romanian government had allowed alien to live, were insubstantial and did not bear a legitimate nexus to finding.*

Evidence/ Rejection by IJ. *Fact that only letters offered in support of alien's application for grant of asylum arrived shortly before his hearing on application did not provide an articulable basis for believing that alien had fabricated the letters, as would potentially support adverse credibility determination, where letters were just two items in over 130 pages of supporting documents, and alien was never questioned about dates of letters or whether they were the only ones he ever received.*

Persecution/ Harassment. *Alien's testimony was sufficient to establish that he had suffered past persecution in his native Romania, and thus to give rise to a rebuttable presumption of a well-founded fear of future persecution which would allow alien to be deemed a refugee eligible for grant of asylum; while some of ills alien had suffered, such as searches, interrogations, and phone taps, could be construed as threats and harassment rather than an actual infliction of suffering or harm, staged hit-and-run crashes in which he was targeted victim put him at serious risk of injury or death.*

Past Persecution/ Failure to Rebut; Changed Conditions Not Found. *Government failed to present evidence of changed conditions in alien's native Romania sufficient to rebut well-founded fear of persecution on part of alien that was created by evidence of his past persecution, and thus, alien qualified as a refugee eligible for grant of asylum; BIA simply made conclusory statement that conditions had changed, and only report pointed to by INS, which was seven years old, stated that police continued to use excessive force and beat detainees.*

Withholding of Deportation/ Denied. *Alien could not demonstrate a clear probability that his persecution would resume were he deported to his native Romania, as required to obtain withholding of deportation, in light of long passage of time and indications that Romania's political terrain could be different than it was when alien left over ten years earlier.*

Russia

Smolniakova v. Gonzales, 422 F.3d 1037 (9th Cir. 2005)
Krotova v. Gonzales, 416 F.3d 1080 (9th Cir. 2005)
Zolotukhin v. Gonzales, 417 F.3d 1073 (9th Cir. 2005)
Gonzales v. Tchoukhrova, 127 S. Ct. 57 (2006)
Chouchkov v. INS, 220 F.3d 1077 (9th Cir. 2000)
Kozulin v. INS, 218 F.3d 1112 (9th Cir. 2000)
Avetova-Elisseva v. INS, 213 F.3d 1192 (9th Cir. 2000)
Bolshakov v. INS, 133 F.3d 1279 (9th Cir. 1998)
Pitcherskaia v. INS, 118 F.3d 641 (9th Cir. 1997)

> ***Kozulin v. INS*, 218 F.3d 1112 (9th Cir. 2000) (A71-945-750)**; *upholding denial of asylum based on a lack of past persecution and lack of a well-founded fear; petition denied; Alien, along with other sailors, accused their captain of corruption. While the others were fired, alien was not because his skills were needed. Alien was directed to remove his signature from the letter making the corruption charge. When he refused to do so, he was beaten by unknown individuals who did not say anything to him; GOODWIN.*

Nexus/ Motive Not Found. *Alien had failed to show that incident in which he was attacked while working on Russian merchant marine ship was in fact motivated by his purported anti-Communist views. "That an attack occurred three weeks after a refusal to join a political party does not compel a finding of asylum eligibility if substantial evidence provides another independent apolitical motivation for the attack; the law of asylum does not require the 'logical fallacy of post hoc, ergo propter hoc ' (literally, 'after this, therefore because of this'). Huskey v. San Jose, 204 F.3d 893, 899 (9th Cir. 2000); cf. Hardt v. Heidweyer, 152 U.S. 547, 558, 14 S.Ct. 671, 38 L.Ed. 548 (1894) ('Post hoc, propter hoc, is not, however, sufficient, and the rule of causation implies some other sequence than that of time.'); cf. Sangha, 103 F.3d at 1487 ('Applicants can no longer establish that their persecution was on account of political opinion by inference....')." (at 1117).*

Well-Founded Fear/ Objectively Reasonable, Not Found. *Mere fact that alien had applied for asylum, did not establish a well-founded fear of persecution on account of his political opinion if he were to return to Russia, even though alien's escape from Russia and application for asylum constituted treason under Russian law.*

***Bolshakov v. INS*, 133 F.3d 1279 (9th Cir. 1998) (A70-183-388)**; *(1) letters from alien's mother constituted neither prima facie case for asylum nor evidence of new circumstances which would allow reopening; (2) regulation allowing alien additional motions to reopen if agreed upon by all parties was not administrative remedy that was required to be exhausted; and (3) alien's potential eligibility for change in status based on recent certification as gifted artist was not sufficient basis for ordering BIA to remand case; petition denied; BRUNETTI; distinguished by Jahed v. INS, 356 F.3d 991 (9th Cir. 2004).*

Motion to Reopen/ No New Evidence. *Letters from alien's mother, indicating that the same persons who had harassed alien while demanding money from him were still looking for him and intended to kill him if he returned to Russia, and that his ex-boss was in the hospital and one of his friends had been found dead, constituted neither prima facie case for asylum nor evidence of new circumstances arising since original hearings which would allow reopening of case.*

***Smolniakova v. Gonzales*, 422 F.3d 1037 (9th Cir. 2005) (A72-401-421)**; *remanding denials of asylum, withholding of removal, and finding that a marriage had been entered into to obtain an immigration benefit . The alien was of "Jewish identity." She testified as to a pattern of significant harassment, threats, and physical mistreatment. The alien had voluntarily returned to Russia three times for periods of up to three months after leaving. Remanding; D.W. Nelson.*

Credibility/ Inconsistencies, Minor; Omissions. *The adverse credibility finding was reversed. The court restated the principle that: "The inconsistencies that an IJ adduces to establish a lack of credibility must...be specific and concrete" and "must go to the heart of the asylum claim, " citing Singh v. Ashcfroft, 301 F.3d 1109, 1111 (9th Cir. 2002). The court also restated the principle from Lopez-Reyes v. INS, 79 F.3d 908, 911 (9th Cir. 1996), that, "An applicant's testimony is not per se lacking in credibility simply because it sets forth details that are not set forth in the asylum application." The court criticized the IJ for using information casting into doubt the bona fides of the marriage to support the adverse credibility finding in the adjustment case.*

Pro Se Applicant/ Read Charitably. *"Asylum forms filled out be people who are not able to retain counsel should be read charitably, especially when it comes to the absence of a comprehensive and thorough account of all past incidents of persecution."*

Unable or Unwilling to control/ Private Agent. *"Asylum is not restricted to petitioners who had suffered persecution at the hands of state actors, " citing Kratova v. Gonzales, 416 F.3d 1080 (9th Cir. 2005). "The Russian government was unwilling or unable to control the anti-Semitic groups responsible for Jewish Petitioner's mistreatment."*

Persecution/ Threats Alone. *"Repeated death threats, especially when those threats occurred in conjunction with other forms of abuse, require a finding of past persecution." Mamaiyian v. Ashcroft, 390 F.3d 1129 (9th Cir. 2004), or Navas v. INS, 217 F.3d 646, 648 (9th Cir. 2000). "We have consistently held that death threats alone can constitute persecution." Additionally, "Even if a single incident does not rise to the level of persecution, the cumulative effect [can]."*

Past Persecutions/ Changed Conditions Not Found. *The court reversed the finding that even if there had been past persecution, the claim could still be denied on the basis of changed country conditions in that there were still on going problems associated with this type of claim in Russia.*

> ***Krotova v. Gonzales*, 416 F.3d 1080 (9th Cir. 2005) (A76-853-817)**; *finding past persecution. A Jewish woman reported various acts of harassment, discrimination, physical violence, and threats over a period of time. Remanding; GRABER.*

Persecution/ Cumulative Effect. *The court extended its holding in Korablina v. INS, 158 F.3d 1038 (9th Cir. 1998) and emphasized that the assessment of past persecution is based on the "cumulative effect." It further noted "her inability to practice her religion is significant."*

> ***Zolotukhin v. Gonzales*, 417 F.3d 1073 (9th Cir. 2005) (A71-421-603)**; *A Pentecostal was denied relief and had her denial remanded due to due process concerns pertaining to the IJ precluding the presentation of evidence an having "prejudged" the case; GOULD.*

Evidence/ Testimony, Telephonic. *It was error to not allow telephonic testimony from alien's expert "because the testimony would have covered issues not in the written materials and reflected directly on petitioner's credibility on points which the IJ expressed skepticism."*

> ***Gonzales v. Tchoukhrova*, 127 S. Ct. 57 (2006), vacating and remanding 404 F.3d 1181 (9th Cir. 2005) (A75-772-599)**; *"[D]isabled children and their parents constitute a statutorily protected group" (at 1184); granting withholding of removal and remanding for a determination on asylum; REINHARDT.*

Supreme Court Remand. *The Supreme Court vacated and remanded the case back to the Ninth Circuit in order to allow the BIA the opportunity consider the issues in this first instance. Although vacated, the panel decision remains persuasive authority indicating the Ninth Circuit's likely position when the issue again comes before it.*

Refugee Law/ Intent Of; Derivative Claims/Asylum *In the original panel decision, the court stated: "Immigration law has always had a purpose of protecting families and, where possible, keeping them united. See, e.g., Solis-Espinoza v. Gonzales, 401 F.3d 1090 (9th Cir. 2005) ('The INA was intended to keep families together. It should be construed in favor of family units and the acceptance of responsibility by family members.')" (at 1190–91). The court then went on to recognize a basis where the parents can obtain relief as the child's derivatives when the child was the one who experienced direct persecution. This differs from the usual situation where the parents provide the basis for the child's attainment of relief as the result of the misconduct directed at the parents. ***Compare to Wang v. Gonzales, 405 F.3d 134 (3d Cir. 2005) (in Chinese family planning case, child applicant for asylum could not stand in the shoes of parents who sustained the direct abuse).*

***Chouchkov v. INS*, 220 F.3d 1077 (9th Cir. 2000) (A73-940-062)**; *reversing denial of asylum and remanding to determine if the presumption of future persecution has been rebutted; SHADUR.*

Persecution/ Harassment. *Alien who had been victim of harassment after he failed to approve sale of nuclear materials and technology to Iran in his position as a nuclear engineer, had been made subject to past persecution by reason of his actual or imputed political beliefs, as would qualify him as a refugee eligible for grant of asylum; numerous incidents of harassment, including theft of vehicle and automobile accident, had occurred in span of two and one-half months and thus could not be viewed as coincidence, numerous other incidents, including threatening phone calls and following of applicant, were not chance misfortune, and applicant's employer was an arm of Russian government.*

Credibility/ IJ Speculation. *"It must be stressed that what sounds peculiar in one country may be the norm in another. Consequently, non-evidence-based assumptions about conduct in the context of other cultures must be closely scrutinized." (at 1083, n.15).*

Nexus/ Coincidence. *Although one incident may be "discounted as mere coincidence, surely all of them cannot. It is like multiplying fractions: If for example a 50-50 chance exists that a single incident is purely accidental, those odds become exponentially greater with the occurrence of each ensuing incident. And when the other more than-suspicious surrounding circumstances reviewed hereafter are factored into the calculation, making the likelihood of sheer chance of each incident a long shot, the odds resulting from multiplying those much smaller fractions tend to become extraordinarily high." (at 1083).*

***Avetova-Elisseva v. INS*, 213 F.3d 1192 (9th Cir. 2000) (A74-795-951)**; *reversing BIA's denial of relief and remanding for a grant of withholding and a discretionary grant of asylum; SHADUR; (WARDLAW, dissenting, chided the majority for holding there is a pattern and practice of Armenian harassment in Russia and that such harassment amounts to persecution).*

Persecution/ Harassment, Economic; Protected Grounds/ Ethnicity. *Alleged incident in which ethnic Armenian was harassed and pushed by Russian officers because of her ethnicity, her alleged inability to get job even though she had diploma because "there were no jobs for Armenians, " and alleged rape and beating by police officials of her friend's daughter, who was Armenian, did not amount to past persecution creating rebuttable presumption of objective fear of future persecution for purposes of asylum claim.*

Well-Founded Fear/ Subjectively Genuine. *Russian citizen of Armenian ethnicity met subjective component of test for well-founded fear of future persecution, for purposes of asylum claim; IJ stated after listening to her testimony that she demonstrated high degree of fear and emotion.*

Well-Founded Fear/ Objectively Reasonable, Found; Pattern or Practice; Protected Grounds/ Ethnicity. *Russian citizen of Armenian ethnicity met objective component of test for well- founded fear of future persecution, for purposes of asylum claim, based on her individual experiences of harassment and fact that Russian government was unable or unwilling to stop pattern or practice of harassment of Armenians, notwithstanding fact that Russia's army rescued citizen and other Armenians from Azerbaijan, fact that her husband received pension from Russian government, or fact that she received Russian passport and used it to come to United States to assist her ill sister.*

Unable or Unwilling to Control/ Financial Resources of Gov't. *That Russian government's financial considerations might account for any inability on its part to stop ethnic persecution of persons of Armenian ethnicity was irrelevant to whether asylum applicant established objective element of well-founded fear of persecution; what mattered instead was whether Russian government was unwilling or unable to control those elements of its society committing the acts of persecution.*

Persecution/ Detention, Physical Harm. *Detention, intimidation, and beatings of Armenians in Russia because of their ethnicity constituted "persecution" for purposes of applicant's claim for asylum, inasmuch as it involved infliction of suffering or harm upon those who differed in race, religion, or political opinion in a way regarded as offensive.*

> ***Pitcherskaia v. INS*, 118 F.3d 641 (9th Cir. 1997) (A72-143-932)**; *Russian lesbian suffered mistreatment because of her sexual orientation pursuant to laws that applied generally to the entire population; reversing and remanding based on BIA's error in requiring alien to establish that her persecutor was motivated by desire to punish or inflict harm; B.FLETCHER.*

Persecution/ Definition Of. *"We have defined 'persecution' as 'the infliction of suffering or harm upon those who differ ... in a way regarded as offensive.' Sangha v. INS, 103 F.3d 1482, 1487 (9th Cir. 1997) (citing Sagermark [v. INS, 767 F.2d 645, 649 (9th Cir. 1985)]). This definition of persecution is objective, in that it turns not on the subjective intent of the persecutor but rather on what a reasonable person would deem 'offensive.' That the persecutor inflicts the suffering or harm in an attempt to elicit information, as in Nasseri v. Moschorak, 34 F.3d 723, 724–25 (9th Cir. 1994), for his own sadistic pleasure, as in Lopez-Galarza [v. INS, 99 F.3d 954 (9th Cir. 1996)], to 'cure' his victim, or to 'save his soul' is irrelevant. Persecution by any other name remains persecution." (at 647).*

Senegal

Fakhry v. Mukasey, 524 F.3d 1057 (9th Cir. 2008)
Ndom v. Ashcroft, 384 F.3d 743 (9th Cir. 2004)

***Fakhry v. Mukasey*, 524 F.3d 1057 (9th Cir. 2008)(A78-737-790;** *reversing and remanding a denial of relief. Relief had been denied on the bases that the respondent had not timely filed the I-589 and that he could reasonably relocate to a different part of the country. BERZON.*

Bars to Asylum/ One Year Bar, Not Found. *The respondent testified that he came to the U.S. with the subjective intent to file for asylum but did not do so timely. The court found that notwithstanding the respondent having experienced particular problems prior to his entry that there were sufficient "changed circumstances" to justify the delay given ongoing, significant human rights abuses and particular information that might put him at risk. Hence, "[f]or the first time since his arrival in the U.S., Fakhry had an objectively reasonable basis to believe that" he had a viable claim. (at 1064). The court noted that the IJ had denied the claim on the finding that the beating he previously reported had been insufficiently linked to his asserted political viewpoint.*

Past Persecution/ Internal Relocation Not Possible. *"Where the persecutor is a government or is government inspired...it shall be presumed that internal relocation would not be reasonable..." 8 C.F.R. 208.13(b)(3)(ii); Singh v. Ilchert, 63 F.3d 1501, 1511 (9th Cir. 1995) (stating that a finding of past persecution triggers the belief that "the government has the ability to persecute the application throughout the country.") Accord, Melkonian v. Ashcroft, 320 F.3d 1061, 1070 (9th Cir. 2003).*

Withholding of Removal/ Denied. *The court emphasized the significant evidentiary burden between a grant of asylum requiring only a ten percent change of risk as opposed to a grant of withholding of removal, which requires a greater that 50% chance of risk. The denial of relief on this basis was upheld.*

***Ndom v. Ashcroft*, 384 F.3d 743 (9th Cir. 2004) (A76-858-149)**; *reversing BIA's finding of no past persecution on account of political opinion, granting withholding and remanding for a discretionary grant of asylum; BERZON.*

Persecution/ Threats; Detention; Arrests. *Credible death threats that were made against alien by police commissioner in Senegal, especially when coupled with evidence of his detention, for 19 consecutive days, in dark, crowded cells without formal charges and with no indication of when he would be released, in shackles that prevented him from straightening his legs, and without benefit of toilet in which to urinate, rose to level of "persecution."*

Persecution/ Generalized Violence. *"Widespread violence and detention cannot override record evidence that persecution occurred at least in part as a result of an applicant's protected status. . . Where we have found no persecution despite civil strife or random violence, the reason has been the applicant's failure to establish that his or her persecutor was motivated by one of the five statutory grounds. See, e.g., Rostomian v. INS, 210 F.3d 1088, 1089 (9th Cir. 2000) ('[Petitioners] did not establish that the attack was anything more than an act of random violence during a period of significant strife.'); Gaya Prasad v. INS, 101 F.3d 614, 617 (9th Cir. 1996) ('A necessary element of past persecution is that the alien must show he was persecuted, because of his race, religion, nationality, membership in a particular social group, or political opinion. It is not sufficient to show he was merely subject to the general dangers attending a civil war of domestic unrest.' (quotation marks and citations omitted))." (at 752–53).*

Persecution/ Ethnic Cleansing. *"If violence has its roots in enmity based on a protected statutory ground, this state of affairs will bolster an asylum claim. An extreme example is ethnic cleansing. . . . Even in circumstances falling short of such barbarity, we are similarly more likely to find that particular instances of past persecution experienced by an applicant were inflicted on account of a protected ground*

where similar acts are regularly experienced by others who share the applicant's protected affiliation. See, e.g., Chand v. INS, 222 F.3d 1066, 1076 (9th Cir. 2000) ('[T]hat other Indian Fijians have faced persecution similar to the persecution Chand suffered strengthens, rather than weakens, his claim.'); Kotasz, 31 F.3d at 854 ('[T]he existence of persons similarly situated to [the petitioner] in some ways strengthens his claim by establishing that his case was part of a larger government tendency to detain and harass, rather than an isolated event.')." (at 753–54).

Civil Strife/ Claims Arising in Context Of. *"With respect to claims of past persecution ... requiring an applicant to show that the persecution he or she suffered was 'appreciably different from the dangers faced by ... fellow citizens, ' Kotasz, 31 F.3d at 852 (internal quotation and citation omitted), would have a perverse effect: Petitioners whose governments inflict widespread human rights abuses on protected groups would be required to make a greater showing of past persecution than those from countries where human rights abuses are more narrowly targeted." (at 754). "In sum, even in situations of widespread civil strife, 'it is irrelevant whether one person, twenty persons, or a thousand persons were targeted or placed at risk, ' [Kotasz v. INS, 31 F.3d 847, 854 (9th Cir. 1994)], so long as there is a nexus to a protected ground." (at 754). "Evidence of physical harm is not required to establish persecution. See Khup v. Ashcroft, 376 F.3d 898, 903 (9th Cir. 2004); Baballah v. Ashcroft, 367 F.3d 1067, 1074 (9th Cir. 2004). The cumulative effect of harms that might not individually amount to persecution may support an asylum claim." (at 751).*

Serbia and Montenegro

Kasnecovic v. Gonzales, 400 F.3d 812 (9th Cir. 2005)
Hoxha v. Ashcroft, 319 F.3d 1179 (9th Cir. 2003)

> ***Kasnecovic v. Gonzales, 400 F.3d 812 (9th Cir. 2005) (A76-667-668)****; upholding IJ's adverse credibility determination and denial of asylum, withholding and CAT; petition denied; LEAVY.*

Credibility/ Inconsistencies, Material. *Alien entered the US in 1998, and told the INS interviewer that she was born in Montenegro, Yugoslavia. In December 1999, she applied for TPS, stating she was*

born in Kosovo. She made other conflicting statements as well. IJ's adverse credibility finding was thus supported by substantial evidence. Alien's statements regarding her nationality and residence in her interviews, TPS application, asylum applications and testimony before the IJ were inconsistent and material, and her explanation was inadequate.

> ***Hoxha v. Ashcroft*, 319 F.3d 1179 (9th Cir. 2003) (A75-601-538)**; *upholding denial of withholding to citizen of former Yugoslavia who was ethnically Albanian; reversing denial of asylum and remanding for a discretionary grant, noting that "political and social conditions in Kosovo have changed"; CANBY; distinguished by Li v. Ashcroft, 356 F.3d 1153 (9th Cir. 2004).*

Persecution/ Harassment; Threats, Unfulfilled. *Unfulfilled threats by various Serbs against applicant constituted harassment rather than persecution, the one incident of physical violence against applicant was not connected with any particular threat, and there was no evidence indicating that the incident was officially sponsored. Citing with approval, Matter of A- –, 23 I&N Dec. 737, 740 (BIA 2005).*

Well-Founded Fear/ Individualized Risk. *Record provided a lengthy and grisly documentation of the numerous atrocities committed against ethnic Albanians, the threats and violence applicant experienced, although not sufficient to compel a finding of past persecution that would create a presumption in his favor, were indicative of his individualized risk of experiencing similar mistreatment if he returned to Kosovo, and fact that applicant received, and ignored, a summons for an "informative conversation" with Serbian authorities also demonstrated an individualized risk of persecution.*

Withholding of Removal/ Denied. *Although the evidence of abuse against ethnic Albanians was extensive, and although alien demonstrated that he had an appreciably higher risk of persecution than other Albanians, the evidence did not compel a finding that it was more probable than not that he would be persecuted upon return to Kosovo.*

Well-Founded Fear/ Continued Family Presence. *Although continued family presence in the country "ordinarily diminishes the petitioner's risk of future persecution, see, e.g., Lim [v. INS, 224 F.3d 929, 935 (9th Cir. 2000)], evidence of the condition of the applicant's family is relevant only when the family is similarly situated to the applicant. See id. Hoxha has demonstrated that he is not similarly situated because he has been previously victimized by Serbian vigilantes, and because he has been summoned by the Serbian authorities." (at 1184).*

Sierra Leone

Sowe v. Mukasey, 538 F.3d 1281 (9th Cir. 2008)
Sillah v. Holder, 320 Fed.Appx. 503 (9th Cir. 2009)

***Sillah v. Holder*, 320 Fed.Appx. 503 (9th Cir. 2009)**; granting a petition for reconsideration and withdrawing what had been a published decision denying relief. See Sillah v. Mukasey, 519 F.3d 1042 (9th Cir. 2008). The Court substituted an unpublished decision denying the petition for review.*

***Sowe v. Mukasey*, 538 F.3d 1281 (9th Cir. 2008)** (A 79 569 509); remanding a denial of relief on the basis of inadequate consideration of discretionary relief for "humanitarian asylum." The IJ had denied relief based on finding the respondent to be incredible and changed country conditions. The Board did not reach the credibility issue and dismissed the appeal on the bassi of changed that had occurred in Sierra Leone. In other words, even if one was to be deemed as no longer having a well-founded fear of future persecution based on changed country conditions, "humanitarian asylum" is still available upon demonstration of past persecution and must be fully considered." ALARCON.*

Past Persecution/ Changed Conditions Found; Country Reports, Use Of Permitted; Country Reports/ To Rebut Past Persecution, Sufficient. *The court upheld the administrative finding that there had been sufficient evidence of sufficient changed country conditions. The court accepted reliance on the then current State Department report. Kazlauskas v. INS, 46 F.3d 902, 906 (9th Cir. 1995) was cited with approval with regard to the reports being "the most appropriate and perhaps the best resource for information on political situations in foreign nations." This was so even with the recognition that information in the report was "somewhat contradictory" and that there had not been an "individualized analysis" of the impact of the changes as to this particular respondent.*

***Past Persecution/ Humanitarian asylum**. Given the respondent's testimony as to horrific occurrences, and the fact that the Board had not considered the adverse credibility finding, the dismissal of this claim was inadequately supported.*
***CAT.** The court upheld the denial of this claim on the basis of the changed country conditions.*

Somalia

Aden v. Holder, 589 F.3d 1040 (9th Cir. 2009)
Jibril v. Gonzales, 423 F.3d 1129 (9th Cir. 2005)
Ali v. Ashcroft, 421 F.3d 795 (9th Cir. 2005)
Mohamed v. Gonzales, 400 F.3d 785 (9th Cir. 2005)
Ali v. Ashcroft, 394 F.3d 780 (9th Cir. 2005)
Shire v. Ashcroft, 388 F.3d 1288 (9th Cir. 2004)
Farah v. Ashcroft, 348 F.3d 1153 (9th Cir. 2003)

> ***Aden v. Holder*, 589 F.3d 1040 (9th Cir. 2009)(A088-515-143)**; affirming a denial of relief. The respondent "presented himself as a Somalian from a minority clan" whose account of his life is "horrific." The IJ raised a number of credibility "doubts" but did not make an adverse credibility finding. Nor did the Board make such a finding in its review. Applying the REAL ID Act, the court found that the decision would stand because the Respondent had not sufficiently corroborated his case. KLEINFELD.*

***Credibility - Post-REAL ID/ Corroboration, Required**. The IJ recessed and continued the hearing so that the respondent could provide corroboration, so there is no issue whether he should have been given notice of his need for corroboration and his time to provide it. The court found that the REAL ID Act "abrogated" such cases as Ladha v. INS, 215 F.3d 889 (9th Cir. 2000) and Kataria v. INS, 232 F.3d 1107 (9th Cir. 2000), which had held that "corroboration cannot be required for an applicant who testified credibly." The circuit noted "there are three prerequisites before uncorroborated testimony may be considered sufficient:" (1) the applicant's testimony is credible; (2) the applicant's testimony is persuasive; and (3) the applicant's testimony refers to facts sufficient to demonstrate refugee status. "Credible testimony is not by itself enough." In other words, the applicant may "be turned down for failing to provide corroboration where he does have it or could reasonably obtain it." The circuit recognized that "Congress has installed a bias in the statute toward corroboration in the statute to provide greater reliability."*

***Credibility - Post-REAL ID/ Corroboration, Sufficiency**. In response to the IJ's request, respondent provided three unsworn "affidavits" supporting his position. Given that the court found that "Somalia is a violently disorderly place with no established state" it might well have sufficed for Respondent to have testified that he tried to obtain supporting materials but was simply not able to succeed. Given the totality of information in the record, the circuit stated a "highly deferential standard of review" with regard to the determination that the corroboration was insufficient. The circuit found the issue to be "close" but upheld the decision "in light of other evidence in the record casting doubt on [the respondent's] story."*

Due Process/ Translation. *Respondent sought to make a due process argument with regard to the adequacy of the interpretation. The court found no prejudice to Respondent and noted that because the respondent had some ability to communicate in English, "he was not entirely reliant on the translator."*

CAT/ More Likely Than Not, Not Found. *The circuit denied relief because the record did not "compel" a finding that respondent would be "tortured" "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1).*

***Jibril v. Gonzales*, 423 F.3d 1129 (9th Cir. 2005) (A75-596-958)**; *remand for exercise of discretion after finding the alien to be credible and having demonstrated past persecution; The claim related to a "home invasion" involving a considerable amount of physical violence against members of the family of a minority, "disfavored" clan after the fall of the government of Siad Barre in January of 1991. The IJ had found the alien not credible and found that no corroborative evidence had been offered specific to the claimed violence. The BIA summarily affirmed the IJ's decision. The Ninth Circuit found the inconsistencies relied upon by the IJ were either not in fact present or otherwise not significant enough to pass muster under such Ninth Circuit case law as Osorio v. INS, 99 F.3d 928, 931 (9th Cir. 1996) and Mendoza-Manimbao v. Ashcroft, 329 F.3d 655, 660 (9th Cir. 2003). O'SCANNLAIN.*

Credibility/ Implausibility. *"An IJ must be allowed to exercise common sense in rejecting a petitioner's testimony even if the IJ cannot point to specific, contrary evidence in the record to refute it. Without such latitude, IJs would be bound to credit even the most outlandish testimony as long as it was internally consistent and not contradicted by independent evidence in the record;" citing Malhi v. INS, 336 F.3d 989, 993 (9th Cir. 2003) or Singh-Kaur v. INS, 183 F.3d 1147, 1152 (9th Cir. 1999). In rejecting the IJ's adverse credibility finding the Ninth Circuit held, "The IJ found it implausible that Jibril could have remained unresponsive after being kicked in the head, that Jibril could have survived a gunshot wound to the stomach overnight, and that there was a medical facility in Mogadishu during the civil war that could have performed the operation that Jibril described undergoing. In each case the IJ determined that Jibril's account was implausible without pointing to any evidence that contradicted him."*

Credibility/ REAL ID Standard. *Stating regarding the standards set forth for evaluation of credibility at 8 U.S.C. §1158(b)(1)(B)(iii), if they "were in effect today, we would be obliged to deny Jibril's petition" and* ***any*** *inaccuracies in his statement* ***without regard to whether they go to the heart of the claim*** *would be valid bases for the IJ's adverse credibility determination (emphasis in original).*

Ali v. Ashcroft*, 421 F.3d 795 (9th Cir. 2005)**; *remanding after the Supreme Court's decision in* ***Jama v. ICE, *543 U.S. 335 (2005), holding that a Somali national could not be removed to Somalia because Somalia lacked a functioning government*

***Mohamed v. Gonzales*, 400 F.3d 785 (9th Cir. 2005) (A79-257-632)**; *remanding based on finding that forced FGM is a permanent and continuing act of persecution, giving rise to an unrebuttable presumption of a well-founded fear of future persecution; (1) Alien satisfied burden of showing that she was prejudiced by her counsel's deficient performance in immigration proceedings by failing to offer evidence that she was subjected to involuntary FGM; (2) FGM performed on Somalian national qualified as "persecution, " such as might support her asylum claim; and (3) FGM, like forced sterilization, is in nature of permanent and continuing act of persecution, that gives rise to presumption of well-founded fear of future persecution that government cannot rebut with evidence of changed country conditions or of possibility of relocating. REINHARDT.*

Persecution/ FGM. *"[T]he extremely painful, physically invasive, psychologically damaging and permanently disfiguring process of genital mutilation undoubtedly rises to the level of persecution." (at 796). "Furthermore, '[p]ersecution may be emotional or psychological, as well as physical.' Mashiri v. Ashcroft, 383 F.3d 1112, 1120 (9th Cir. 2004)." (at 796). The fact that FGM occurred and the alien is not at further risk, does not take away the basis of the claim. (at 799, citing with approval Qu v. Gonzales, 399 F.3d 1195 (9th Cir. 2005)).*

Protected Grounds/ PSG/FGM. *FGM is persecution on account of membership in a social group, in this case defined as either Somalian females or as young girls in the Benadiri clan, even with it being "widely-accepted and widely-practiced." (at 796–98).*

Well-Founded Fear/ Permanent and Continuing Persecution. *"In sum, because female genital mutilation is, like forced sterilization, a 'permanent and continuing' act of persecution, our precedent dictates the conclusion that the presumption of well founded fear in such cases cannot be rebutted." Alternative, less compelling reasons – persecution of women in Somalia is not limited to FGM, and alien engaged in extramarital sex, increasing her risk of further FGM – "present plausible explanations for why the presumption would prove dispositive in Mohamed's case." (at 801). ***See also Abebe v. Ashcroft, petition for reh'g en banc granted, 400 F.3d 690 (9th Cir. 2005) (panel held that risk of a USC daughter being subjected to FGM was too speculative and denied relief)*

CAT/ Torture, Found; Public Official. *"[T]o the extent that Mohamed's past genital mutilation constitutes torture, her ongoing experience may be enough to establish that she is automatically entitled, without more, to protection under CAT." (at 802). This is so even without any suggestion of governmental involvement or encouragement.*

***Ali v. Ashcroft*, 394 F.3d 780 (9th Cir. 2005) (A75-261-419)**; *reversing IJ's finding of firm resettlement and no past persecution; remanding to consider presumption of future persecution; affirming IJ's denial of CAT relief; D.W. NELSON. This was a "home invasion" case of a member of a minority Somali clan.*

Nexus/ Mixed Motive, Motive Found. *Alien established she was persecuted in part on account of political opinion and for membership in clan which was low in caste system in Somalia; alien's husband worked for political group which empowered her clan, alien was gang raped by members of militia*

composed of members of ruling clan, rapists declared that alien was "getting what she deserved" because of her clan status and "now we are in power" during rape, militia taunted family as being clan traitors, and at least one rapist knew of husband's political affiliation. The fact that these acts may have been done for the assailants "personal gratification" did not take away from the Respondent being able to meet the "on account of" requirement.

Bars to Asylum/ Firm Resettlement, Not Found. *Alien was not firmly resettled in Ethiopia prior to entering United States, even though alien lived and worked in Ethiopia for five years; alien never was offered permanent residence in Ethiopia and alien never had right to remain permanently in Ethiopia.*

Past Persecution/ Country Reports, Use Of Rejected. *"We have repeatedly found that the DHS has not rebutted the presumption of a well-founded fear of persecution when evidence in country reports indicates that persecution similar to that experienced by the petitioner still exists. See, e.g., Agbuya v. INS, 241 F.3d 1224, 1231 (9th Cir. 2001); Kataria v. INS, 232 F.3d 1107, 1115 (9th Cir. 2000)." (at 789). This was so, notwithstanding the report that thousands of Somalis have returned from exile.*

Shire v. Ashcroft, 388 F.3d 1288 (9th Cir. 2004) (A75-661-226)*; reversing IJ's adverse credibility determination and remanding for a consideration of withholding and CAT claims' TASHIMA.*

Credibility/ IJ Speculation; Inconsistencies, Minor. *IJ's rejection as not credible of testimony of past persecution offered by alien was not supported by substantial evidence, where judge relied merely on speculation that it was unlikely that alien could, as he testified, have entered the U.S. with false passport, on minor inconsistencies in alien's testimony not going to the heart of persecution claims, or on alien's failure to produce corroborating evidence, including medical report from doctor in Somalia who treated his thumb after it was allegedly cut off by members of rival clan, that was not easily available to alien in the United States.*

Credibility/ Corroboration Not Required. *"Securing verification of flight records and of entry into the United States from the NIIS is not a 'relatively uncomplicated task, ' especially given the variety of spellings used for Shire's actual name and assumed name, as well as the well-known problems the INS has had tracking immigrants into the United States. Chebchoub [v. INS, 257 F.3d 1038, 1044–45 (9th Cir. 2001)] (internal quotation marks omitted)." (at 1298).*

Evidence/ Authentication, Inability To. *Failure to authenticate, at least in the absence of evidence undermining their credibility, does not indicate submitted documents are anything but what they purport to be.*

Farah v. Ashcroft, 348 F.3d 1153 (9th Cir. 2003) (A75-635-912)*; upholding IJ's adverse credibility determination and denial of asylum; reversing frivolous asylum application finding; vacating the order of permanent ineligibility for immigration benefits; SCHROEDER.*

Credibility/ Articulable Basis. *IJ offered specific, cogent reasons for disbelief and found alien was not credible regarding "key elements of the asylum application, including identity, membership in a persecuted group, and date of entry in the United States. Eligibility for asylum depends on the credible*

establishment of these elements. 8 U.S.C. § 1158(d)(5)(A)(i). We must defer to the IJ's credibility findings and uphold the denial of asylum relief." (at 1156).

CAT/ Raised as Claim. *Although under Kamalthas v. INS, 251 F.3d 1279, 1282–83 (9th Cir. 2001), the court rejected the BIA's determination that an applicant fails to satisfy his burden of presenting a prima facie case for CAT relief where he merely restates facts that have already been deemed incredible at a prior asylum hearing and that the standards for the two bases of relief are distinct and should not be conflated, there was also corroborative evidence the BIA failed to consider; where an applicant's claims under CAT are based on the same statements that were deemed to be not credible in the asylum context, and the alien fails to submit other evidence corroborating the likelihood of torture, the CAT claim summarily fails. (at 1156–57). Kamalthas is distinguished on the basis that there was in the record evidence which was not central to an asylum claim but would be to a CAT claim.*

South Africa

Gonzales v. Thomas, 547 U.S. 183 (2006), rev'g 409 F.3d 1177 (9th Cir. 2005) (en banc)
Gormley v. Ashcroft, 364 F.3d 1172 (9th Cir. 2004)

Gonzales v. Thomas, 547 U.S. 183 (2006) (per CURIAM), rev'g 409 F.3d 1177 (9th Cir. 2005) (en banc reh'g of 359 F.3d 1169 (9th Cir. 2004)) (A75-597-035)*; The Supreme Court granted the government's petition for a writ of certiorari and summarily reversed the Ninth Circuit's en banc opinion. Although the respondent had claimed, inter alia, persecution on the basis of membership in a particular social group, the administrative process had not considered this claim in denying relief. The Supreme Court characterized the Ninth Circuit's opinion as having "unanimously held... a family may constitute a social group" and overruled "aberrant contrary circuit precedent." The Supreme Court held that the en banc decision erred under INS v. Ventura, 537 U.S. 12 (2002), in that the administrative process was not first given the opportunity to consider the issue.*

Gormley v. Ashcroft, 364 F.3d 1172 (9th Cir. 2004) (A77-855-502)*; (1) robberies suffered by asylum applicant did not establish past criminal persecution; (2) aliens failed to provide evidence*

that they suffered from past economic persecution; and (3) aliens failed to establish eligibility for asylum on the basis of a well-founded fear of economic and/or criminal persecution; petition denied; WARDLAW.

Persecution/ Robbery; Random Attack. *Robberies suffered by a White asylum applicant did not establish past criminal persecution where there was no showing that Black perpetrators victimized him on account of his race as opposed to their observation that he carried a cell phone and a watch; random, isolated criminal acts perpetrated by anonymous thieves do not establish persecution. "Robberies of this sort are all too common a by-product of civil unrest and economic turmoil. ... Random, isolated criminal acts perpetrated by anonymous thieves do not establish persecution. See Rostomian v. INS, 210 F.3d 1088, 1089 (9th Cir. 2000)." (at 1177).*

Persecution/ Economic; Protected Grounds/ Race. *Aliens who claimed that implementation of South Africa's Employment Equity Act 55 resulted in their economic persecution on account of their race by causing them to lose their longtime jobs and rendering them unable to secure new ones, failed to provide evidence that they suffered from past economic persecution; applicants suffered, at most, what could be perceived as reverse discrimination which resulted in some adverse economic consequences.*

Persecution/ Discrimination. *"[Aliens] have established only that they fear (1) future racial discrimination with adverse economic consequences, and (2) potential criminal attacks from random black assailants. These fears, while perhaps well-founded, do not amount to persecution." (at 1180).*

Civil Strife/ Claims Arising in Context Of; Past Persecution/ Country Reports, Use Of Permitted. *The State Department's assessment that wealth "remains highly skewed among racial lines" factors into the objective component of the claim. (at 1175, 1179). "Asylum is generally not available to victims of civil strife unless they are singled out on account of a protected ground." (at 1177, quoting Ochave v. INS, 254 F.3d 859, 865 (9th Cir. 2001)).*

Persecution/ Discrimination. *"Discrimination on the basis of race or religion, as morally reprehensible as it may be, does not ordinarily amount to 'persecution, ' ... even if it generates an adverse economic result." (at 1178).*

Sri Lanka

Don v. Gonzales, 476 F.3d 738 (9th Cir. 2007)
Suntharalinkam v. Gonzales, 506 F.3d 822 (9th Cir. 2007)
Nadarajah v. Gonzales, 443 F.3d 1069 (9th Cir. 2006)
Thangaraja v. Gonzales, 428 F.3d 870 (9th Cir. 2005)
Arulampalam v. Ashcroft, 353 F.3d 679 (9th Cir. 2003)
Kankamalage v. INS, 335 F.3d 858 (9th Cir. 2003)
Paramasamy v. Ashcroft, 295 F.3d 1047 (9th Cir. 2002)
Kamalthas v. INS, 251 F.3d 1279 (9th Cir. 2001)
Ratnam v. INS, 154 F.3d 990 (9th Cir. 1998)

> ***Don v. Gonzales*, 476 F.3d 738 (9th Cir. 2007)** (A79-519-692); upholding an adverse credibility determination resulting in denial of asylum and related relief. The claim was from a family which was not politically active. The lead respondent (father) testified that he and his family received threats from both sides in the Sri Lankan civil war because a "cook employed at the restaurant owned by Don was arrested . . . as a suspected LTTE terrorist." "The LTTE never came to Don's home and neither he nor his family was physically harmed." The adverse credibility determination was based on: "inconsistency in the evidence presented regarding a crucial date, the implausibility of Don's account, and Don's propensity for dishonesty." The lead respondent gave conflicting dates as to when the cook was first employed; RAWLINSON. There was a very long and impassioned dissent by WARDLAW.*

Credibility/ Propensity for Dishonesty. *"Admission of prior dishonesty can support an adverse credibility determination." (Citing Kaur v. Gonzales, 418 F.3d 1061, 1064 n.1 (9th Cir. 2005)). "A statement that one's memory is better now than it was earlier supports an inference of untruthfulness." (Citing Kelly v. City of San José , 114 F.R.D. 653, 667 (N.D. Cal. 1987) (recognizing that memory is fresher "closer in time to the subject events")). When documentary evidence offered to support a claim is questionable, an adverse determination is supported." (Citing Singh v. Ashcroft, 367 F.3d 1139, 1143 (9th Cir. 2004) (refusing to credit documents that appeared backdated, did not show the claimed injuries, and omitted described medical treatment)). The inability to recall the date when the cook commenced employment "went to the heart of Don's claim because it involved the very event upon which he predicated his claim for asylum." (Citing Chebchoub v. INS, 257 F.3d 1038, 1043 (9th Cir. 2001)). The court sustained the IJ's finding in that "Don admitted lying to the Sri Lankan police and to the LTTE, because he was afraid of what would happen if he told the truth." Among the supporting citations is Kaur v. Gonzales, supra.*

Credibility/ Implausibility. *The court sustained the IJ's finding citing to Jibril v. Gonzales, 423 F.3d 1129, 1135 (9th Cir. 2005): "testimony that is implausible in light of the background evidence can support an adverse credibility determination."*

***Suntharalinkam v. Gonzales*, 506 F.3d 822 (9th Cir. 2007) (A79-784-825)**; *A citizen of Sri Lanka reported significant mistreatment at the hands of the Sri Lankan army because he was suspected of being a terrorist associated with the LTTE. The IJ made an adverse credibility finding. This was based on eight different factors. Included was the evidence presented by a DHS investigator who asserted that the respondent was part of a group of Sri Lankans smuggled to the United States by the LTTE and that such constituted "material aid to a terrorist organization in violation of U.S. law." After the case was presented for en banc consideration, the petitioner moved for the appeal to be dismissed on the basis that he had left the U.S. to pursue an asylum claim in Canada. The government requested both its costs and a payment for its attorneys fees. The en banc decision vacated the panel decision, but denied these requests.*

Evidence/ Reliance on Investigative Report. *DHS presented a report from an investigator. The court faulted reliance thereon in that the investigator did not rely on "individualized facts about" respondent as opposed to an analysis of general trends and conditions."*

***Nadarajah v. Gonzales*, 443 F.3d 1069 (9th Cir. 2006)**; *The case granted a writ of habeas corpus to a citizen of Sri Lanka who had been granted asylum on the basis of past persecution as a Tamil from government forces opposing the LTTE. He had been held in detention for nearly five years and had been denied parole on the basis of allegations that he had been involved in terrorist activities based on allegations of terrorist involvement received by the government from an anonymous source. The court held that the general detention provisions pertaining to aliens "cannot be read to authorize the indefinite detention of suspected terrorists." THOMAS. The court awarded EAJA fees of $156,778.68 to the respondent's attorneys upon its finding that the government's position in the litigation had not been substantially justified. 569 F.3d 906 (9th Cir. 2009).*

***Thangaraja v. Gonzales*, 428 F.3d 870 (9th Cir. 2005)**; *granting EAJA fees in a Sri Lankan asylum case. An ethnic Tamil asserted that she had been detained and sustained physical mistreatment by the Sri Lankan Army because of its belief that she had been assisting the LTTE. An IJ denied the case and the Ninth Circuit remanded in an unpublished decision. The court found the agency decision not to have been "substantially justified." BERZON.*

Persecution/ Prosecution. *Respondent has made no claim of any political activity. The IJ had denied relief, in part, on the basis that her treatment had been "for questioning on the basis of a legitimate investigation" into violent terrorist type activity. Additionally, there was the finding by the IJ: "The objective evidence indicates that there are very few instances where women are associated with the Tamil Tigers...[or] to support respondent's claim that there even would be a question of imputed political opinion to a female youth in Sri Lanka." The court cited its previous Sri Lankan case law of Ratnam v. INS, 154 F.3d 990 (9th Cir. 1998) and Arulampalam v. Ashcroft, 353 F.3d 679 (9th Cir. 2003), in squarely rejecting the IJ's position.*

Credibility/ Detail, Lack Of. *The IJ found the respondent not credible because, while her testimony about her journey to the U.S. had great detail, other portions were much more vague. The Ninth Circuit*

reversed, finding the overall story to be "sufficiently descriptive." See Akinmade v. INS, 196 F.3d 951, 957 (9th Cir. 1999).

***Arulampalam v. Ashcroft*, 353 F.3d 679 (9th Cir. 2003)**; reversing IJ's adverse credibility determination; remanding to a different IJ for a determination of asylum on the merits; BERZON; (FERNANDEZ, concurring with the CAT decision, but dissenting in regards to the credibility determination).*

***Credibility/ Articulable Basis; Corroboration Not Required.** It is improper for an IJ, in making credibility determinations, to make generalized statements that do not identify specific examples of evasiveness or contradiction in an asylum applicant's testimony. It is inappropriate to base an adverse credibility determination on an asylum applicant's inability to obtain corroborating affidavits from relatives or acquaintances living outside of the United States.*
***Credibility/ Demeanor.** Credibility determinations regarding demeanor must include specific reference to non-verbal communication as a basis for the decision.*

***Kankamalage v. INS*, 335 F.3d 858 (9th Cir. 2003) (A29-545-842)**; remanding based on finding the particularly serious crime bar to asylum eligibility does not apply retroactively; SILVERMAN.*

***Bars to Asylum/ Particularly Serious Crime, Not Found.** Under regulation providing that IJ may not grant asylum to any alien who, having been convicted of particularly serious crime, constitutes a danger to community, the INS need not make separate determination of danger to community once it finds that alien's offense constitutes a particularly serious crime; however, the regulation could not be applied retroactively to alien who, at time he pled guilty to allegedly disqualifying crime, would not have been rendered ineligible for asylum under then-existing law.*

***Paramasamy v. Ashcroft*, 295 F.3d 1047 (9th Cir. 2002) (A71-890-116)**; reversing adverse credibility determination and remanding for a new hearing; McKEOWN.*

***Credibility/ Boilerplate Determinations.** Boilerplate opinions neither afford asylum applicant the BIA review to which he or she is entitled, nor do they provide an adequate basis for court to conduct its review. Boilerplate adverse credibility findings, which focused on demeanor observations that were worded identically to findings in two other opinions that the judge issued in the same week, indicated that asylum applicant's case did not receive the individualized attention that it deserved; identical descriptions of the demeanor of witnesses in three different cases demonstrated IJ's predisposition to discredit the testimony, rather than any lack of credibility on the part of the witnesses.*
***Credibility/ False Statements.** Use of false documents for travel was not a proper basis for an adverse credibility determination in an asylum case.*

***Kamalthas v. INS*, 251 F.3d 1279 (9th Cir. 2001) (A73 436 759)**; *vacating denial of CAT based solely on asylum ineligibility and remanding; B.FLETCHER.*

CAT/ Raised as Claim. *Inability to state a cognizable asylum claim did not necessarily preclude relief under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Alien testified he left Sri Lanka because Tamil Tiger rebels attempted to recruit him and then beat him for refusing to join them. As a Tamil male, he was then captured and subjected to torture by Sri Lankan police.*
Country Reports/ To Support Claim, Sufficient. *In order to present a prima facie case for relief under Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, burden of proof is on the petitioner to establish that it is more likely than not that he or she would be tortured if removed to the proposed country of removal; country conditions alone can play a decisive role in granting relief under the Convention, and relief under the Convention does not require that the prospective risk of torture be on account of certain protected grounds.*

***Ratnam v. INS*, 154 F.3d 990 (9th Cir. 1998) (A72-971-125)**; *reversing denial of asylum and withholding; remanding for a grant of withholding and a discretionary grant of asylum; B.FLETCHER.*

Credibility/ Explicit Finding. *BIA did not err in determining that IJ did not disbelieve the material facts testified to by alien regarding asylum claim and that he should be considered a credible witness; although IJ found alien "not a totally credible witness, " BIA determined that there was no indication that IJ disbelieved material facts relevant to BIA's legal determination.*
Nexus/ Mixed Motive; Motive Found. *Torture of alien by Sri Lankan government officials, after he was allegedly forced by Liberation Tigers of Tamil Elam (LTTE) to transport weapons in his fishing boat, was on account of his imputed political opinions, and thus was basis for relief from exclusion and deportation, even if the torture was conducted for intelligence-gathering purposes.*
Persecution/ Torture; Prosecution; Protected Grounds/ Political Opinion, Found. *Torture in the absence of any legitimate criminal prosecution, conducted at least in part on account of political opinion, provides a proper basis for asylum and withholding of deportation even if the torture served intelligence gathering purposes.*

Sudan

Al-Mousa v. Mukasey, 516 F.3d 738 (9th Cir. 2008)

Kalouma v. Gonzales, 512 F.3d 1073 (9th Cir. 2008), modifying 499 F.3d 1090 (9th Cir. 2007) and denying any further motion for reconsideration
Taha v. Ashcroft, 389 F.3d 800 (9th Cir. 2004)

Al-Mousa v. Mukasey, *516 F.3d 738 (9th Cir. 2008), withdrawn, No. 06-70638, slip op (9th Cir. Sept. 22, 2008)*

Kalouma v. Gonzales, *512 F.3d 1073 (9th Cir. 2008), modifying 499 F.3d 1090 (9th Cir. 2007) and denying any further motion for reconsideration* ***(A78-535-064);*** *reversing and remanding a denial of asylum on the basis that "if the person's identity is undetermined, then the person would not be able to be granted asylum." This was so even though the IJ had made an adverse credibility finding. NOONAN. There was a dissent by TALLMAN. He noted: "There is substantial fraud in immigration matters, and we should not blind ourselves to the black market in false documents." Kalouma v. Gonzales, 499 F.3d 1090, 1093 (9th Cir. 2007).*

Identity/ Identification Standard. *Notwithstanding the 1996 amendments to the INA, the court holds that asylum cannot be denied on the basis of failure to satisfactorily identify one's self. It was sufficient for the respondent to have "identified himself in terms of his parents, birth date, birth place, tribe and religion." Kalouma v. Gonzales, 499 F.3d at 1092.*
Credibility/ Inconsistencies, Minor. *The IJ's adverse credibility determination was reversed. The decision emphasizes the necessity for an actual inconsistency if that is to be a basis for disbelief. The IJ's reliance on this inconsistency was not accepted: "he watched his uncle murdered in the hut" as compared to the "uncle died one week after he was beaten in the hut." (at 1074). A second rejected example was: "Kalouma told the Border Patrol that he had come to America for an education for four years before returning to Sudan. He later applied for asylum as a refugee. The IJ treated these two positions as inconsistent establishing Kalouma's insincerity." (at 1075). With regard to inconsistencies between the testimony and the I-589, "anyone who has had any experience with asylum cases is aware that asylum applications are usually slapped together with little or inexpert legal advice and that they rarely tell the asylum seeker's whole story." (at 1075).*

***Taha v. Ashcroft*, 389 F.3d 800 (9th Cir. 2004) (on reh'g of 362 F.3d 623) (A75-664-597);** *reversing adverse credibility determination and denial of CAT; remanding for grant of CAT, withholding, and discretionary grant of asylum; An asylum seeker had withheld from the I-589 information about a rape which was central to the claim. The court, on reconsideration, reversed its decision after initially upholding an adverse credibility determination as finding at first that it was not reasonable to withhold the information notwithstanding the claim that it was painful for the applicant to have disclosed such to the preparer of the I-589; BEEZER, KOZINSKI, and SCHWARZER.*

Credibility/ Omissions. *"[W]hile it is true that [alien]'s testimony offered considerably more detail than his asylum application, there is nothing inconsistent about the two accounts. We have repeatedly held that the 'failure to file an application form that was as complete as might be desired cannot, without more, properly serve as the basis for a finding of a lack of credibility.' Aguilera-Cota v. U.S.INS, 914 F.2d 1375, 1382 (9th Cir. 1990); see also Akinmade v. INS, 196 F.3d 951, 956 (9th Cir. 1999)." (at 801).*

Credibility/ Detail, Lack Of. *Contrary to BIA's and IJ's finding that alien's testimony lacked specificity, his "testimony concerning his torture at the hands of the Sudanese government was quite specific, oftentimes containing horrific details." (at 802).*

CAT/ Independent Evaluation Required. *BIA must independently evaluate Convention Against Torture claims; denials based solely on adverse credibility findings with respect to asylum claims will be reversed.*

Syria

Hamoui v. Ashcroft, 389 F.3d 821 (9th Cir. 2004)

***Hamoui v. Ashcroft*, 389 F.3d 821 (9th Cir. 2004) (A72-110-294)**; *reversing denial of motion to reopen based on finding applicant had presented prima facie case for CAT eligibility; remanding for a hearing on CAT relief; CANBY. The Ninth Circuit had previously upheld the denial of claims for asylum and withholding of deportation.*

Ineffective Assistance of Counsel/ Prejudice Found. *Denial of alien's motion to reopen removal proceedings, based upon allegedly ineffective assistance that he received in connection with presentation of claim for relief under CAT, was abuse of discretion; BIA, in denying alien's motion on theory that any deficiencies in counsel's performance could not have prejudiced him because he had not shown that he would be tortured if returned to his homeland, and because IJ's rejection of his asylum claim foreclosed relief under CAT, applied incorrect standard for relief under CAT and improperly equated evidence needed to sustain asylum claim with evidence needed to establish claim under CAT.*

CAT/ Public Official. *To obtain relief, one must demonstrate a greater than fifty percent risk of torture, but it need not be by the governmental "authorities" themselves. Syrian national established prima facie case for relief under CAT, and was entitled to have removal proceedings reopened so that he could have full hearing on matter, by submitting affidavit that he believed that he would be detained and tortured based on his prior currency violation and his prior interrogations by Syrian officials, and by submitting opinions of three individuals who had expertise in human rights violations in Syria and the Middle East, all of whom opined that it was more likely than not that alien would be tortured if he were deported to Syria.*

Ukraine

Dzyuba v. Mukasey, 540 F.3d 955 (9th Cir. 2008)
Husyev v. Mukasey, 528 F.3d 1172 (9th Cir. 2008)
Fedunyak v. Gonzales, 477 F.3d 1126 (9th Cir. 2007)
Sagaydak v. Gonzales, 405 F.3d 1035 (9th Cir. 2005)
Halaim v. INS, 358 F.3d 1128 (9th Cir. 2004)
Nagoulko v. INS, 333 F.3d 1012 (9th Cir. 2003)
Korablina v. INS, 158 F.3d 1038 (9th Cir. 1998)

***Husyev v. Mukasey*, 528 F.3d 1172 (9th Cir. 2008) (A79-290-596)**; *affirming a denial of relief. "Husyev submitted a declaration in which he described in detail several instances in which he and his immediate family members suffered verbal and physical abuse at the hands of members of Ukranian nationalist groups" because of their ethnicity. (at 1175). The respondent's asylum claim was denied for failure to timely file his application. His other claims were denied based on an adverse credibility determination. The court affirmed but found it had jurisdiction to review the one-year filing issue. CANBY.*

Bars to Asylum/ One Year Bar, Found. *The court found: "[W]e have jurisdiction under the REAL ID Act to review" the timeliness of the application. (at 1175). The application has been filed 364 days after the respondent's legal status had expired. The court suggested in dictum that a six-month period might be considered "reasonable" and that the administrative finding of an untimely filing was correct.*
Credibility/ Omissions. *The court upheld the adverse credibility determination. This was over the "omission" of "Husyev's failure to mention in his asylum application and interview [before the asylum adjudicator] the 15 speeches that he gave in the Ukraine in the early 1990s to denounce the persecution of ethnic minorities at the hands of Ukraine ultra-nationalists." (at 1183). The court cited with approval Li v. Ashcroft, 378 F.3d 959, 962 (9th Cir. 2004) and Wang v. INS, 352 F.3d 1250, 1257 (9th Cir. 2003) as this "omission of his political activities in his application and interview goes to the heart of his claim." Id.*

***Halaim v. INS*, 358 F.3d 1128 (9th Cir. 2004) (A75-246-634)**; *(1) discrimination against aliens in Ukraine, due to their religion, did not rise to level of persecution; (2) "Lautenberg Amendment" did not create presumption that aliens were eligible for asylum; petition denied; GRABER.*

Persecution/ Discrimination; Not Rising to Level Of. *Discrimination against aliens in Ukraine, due to their religion, did not rise to level of persecution; while aliens were victims of many derogatory comments and, over course of 50 years, a few incidents that could have been deemed police harassment, aliens were able to secure long-term employment in Ukraine, and lived relatively unmolested lives for last decade of their time there.*
Well-Founded Fear/ Lautenberg Amendment. *"Lautenberg Amendment, " which lowered burden of proof for aliens from certain groups processed outside United States to establish eligibility for asylum, did not create presumption that two aliens in United States, from one such group, were eligible for asylum; even if Amendment was not expressly limited to claims by aliens processed outside United States, it still required each applicant to establish particularized well-founded fear of persecution, and lower standard of proof was not the same as conclusive presumption.*

***Nagoulko v. INS*, 333 F.3d 1012 (9th Cir. 2003) (A73-397-458)**;*upholding denial of asylum and withholding; petition denied; GOULD.*

Persecution/ Definition Of; Of Family; Of Friends or Affiliates. *For purposes of an asylum application, "persecution" is an extreme concept that does not include every sort of treatment our society regards as offensive. Acts of violence committed against an asylum applicant's friends or family can establish well-founded fear of persecution.*

Persecution/ Physical Harm Not Necessary. *"In the precise circumstances of this case, it is significant that Nagoulko never suffered any significant physical violence. Unlike in other cases where we have held that the record compels a finding of past persecution, Nagoulko was never physically harmed. . . The recital of two occasions where Nagoulko was 'pushed' while attending church services interrupted by government officials does not compare to the severity of physical abuse that in other cases we have deemed persuasive to show persecution." (at 1016).*

Well-Founded Fear/ Objectively Reasonable, Not Found; Speculative. *"Nagoulko testified that her greatest fear in returning to the Ukraine is that the Communist party will regain power and kill her on account of her religious beliefs. She has submitted no specific evidence to suggest that the Communist party will regain power in the Ukraine. Though changes of government are always possible in any country, on the record before us, this possibility is too speculative to be credited as a basis for fear of future persecution. This conclusion is reinforced by the January 1995 Country Report of Ukraine submitted to the IJ, which does not support the likelihood of Ukraine's return to Communism that Nagoulko fears. While we fully accept that Nagoulko's fear of future persecution is subjectively genuine, it is not objectively reasonable under the circumstances of this case." (at 1018).*

***Dzyuba v. Mukasey*, 540 F.3d 955 (9th Cir. 2008) (A 71 084 224)**; *reversing and remanding an order of removal to Ukraine. Respondent had come to the U.S. as a refugee on the basis of a passport by the then Soviet Union. He and his family had lived in the then Ukrainian Republic thereof prior to it becoming an independent state. The court found a misapplication of section 1231(b)(2)(E)(i) with regard to designation of a country of removal. It was error to have designated Ukraine when there was no such country. PER CURIAM.*

Country of Removal/ Designation. *The case was remanded with the direction that he Board answer the question as to "whether 'country' as used in the INA requires an independent political entity or encompasses a non-sovereign region within another sovereignty."*

***Fedunyak v. Gonzales*, 477 F.3d 1126 (9th Cir. 2007) (A78-757-706)**; *reversing and remanding denials of asylum and withholding of removal. Respondent was a business man. A local government official demanded illicit payments. The respondent was assaulted when he refused to make them. When respondent sought the assistance of local police, he was further threatened and made payoffs to them. Respondent made complaints to various governmental officials about this corruption. He was again threatened and assaulted. There was no issue as to credibility. The administrative denial had been based on the finding that "the extortion suffered by Fedunyak was motivated by 'personal' rather than 'political' interests." FISHER.*

Protected Grounds/ Political Opinion/Whistleblowing. *"Fedunyak's whistleblowing was political because – in criticizing the local regime's failure to stop the extortion scheme – his acts were directed toward a governmental institution' and not only 'against individuals whose corruption was aberrational.'" (Quoting Grava v. INS, 205 F.3d 1177, 1181 (9th Cir. 2000) and also citing Hasan v. Ashcroft, 380 F.3d 1114, 1120 (9th Cir. 2004) ("holding that whistleblowing was political where an alien*

published article criticizing not just politician's corruption but also the indifference exhibited by local law enforcement"). "Retaliation for investigating or publicizing corruption by political figures is by its very nature a political act." Sagaydak v. Gonzales, 405 F.3d 1035, 1042 (9th Cir. 2005). "It was sufficient that Fedunyak demonstrated that he suffered retaliation for acting against governmental corruption."

> ***Sagaydak v. Gonzales*, 405 F.3d 1035 (9th Cir. 2005) (A77-424-463)**; *reversing and remanding denial of asylum and withholding upon finding persecution was on account of an imputed political opinion; upholding denial of CAT; Alien, who worked for the Tax Inspectorate in Ukraine, uncovered an illegal tax-evasion scheme in an audit of the Hidro Corporation, which was founded by a high-ranking government official. After alien refused Hidro's bribes, his wife was briefly abducted, he received threatening phone calls, and his cousin was shot. The court found that "[b]y adhering to the new government policies and refusing Hidro's bribes, [alien] took a political stance in opposition to the corrupt government practices that allowed Hidro to exist." Furthermore, because of widespread government corruption at all levels, his "refusal to accede to Hidro's bribery, in the context of Ukrainian politics, was a political statement." (at 1044). PAEZ; (TASHIMA, dissenting in part and concurring in part, found the majority impermissibly narrowed the plain meaning of "any determination" and ignored Hakeem v. INS, 273 F.3d 812, 815 (9th Cir. 2001) in assuming jurisdiction over erroneous INA § 208(a)(2) determinations); but cf. Carrillo-Gonzalez v. INS, 353 F.3d 1077 (9th Cir. 2003) (IJ lacks authority to equitably toll one-year deadline for diversity visa lottery program, notwithstanding a claim of being actively mislead).*

Protected Grounds/ Imputed Political Opinion, Found. *Alien's status as a government employee in the Ukrainian Tax Inspectorate office was sufficient to show an imputed political opinion under Navas v. INS, 217 F.3d 646, 659 n. 19 (9th Cir. 2000) (finding "persecution of those who work for or with political figures to be on account of the political opinion of their employer even if the nature of their work ... is not in itself political."), and Aguilera Cota v. INS, 914 F.2d 1375, 1380 (9th Cir. 1990) ("[Alien]'s status as a government employee caused the opponents of the government to classify him as a person 'guilty' of a political opinion."). (at 1042).*

Protected Grounds/ Political Opinion/Whistleblowing. *"Retaliation for investigating or publicizing corruption by political figures is by its very nature a political act. Reyes-Guerrero v. INS, 192 F.3d 1241, 1245 (9th Cir. 1999)." (at 1042). The corruption being exposed must have "far reaching roots, " and "'retaliation completely untethered to a governmental system does not afford a basis for asylum.'" (at 1042–43; quoting Grava v. INS, 205 F.3d 1177, 1181 n. 3 (9th Cir. 2000)). Exposing corruption within a private organization qualified as protected political activity where there were close ties between the organization and the government.*

Nexus/ Mixed Motive. *"The requirement that persecution be 'on account of' political opinion 'does not mean persecution solely on account of the victim's political opinion.'" (at 1044; quoting Borja v. INS, 175 F.3d 732, 735 (9th Cir. 1999) (en banc) (quotation marks omitted; emphasis in original)). "That the Hidro officials may have been motivated in part by personal retribution does not mean that they did not also see [alien] as their political enemy. ... 'In such instances, personal retaliation against a vocal political opponent does not render the opposition any less political, or the opponent any less deserving of asylum.' Grava, 205 F.3d at 1181 n. 3." (at 1044; emphasis in original).*

Bars to Asylum/ One Year Bar, Not Found. *"[T]he IJ believed that the one-year deadline was absolute and not subject to any exception." (at 1040). "Had the IJ merely erred in making a determination ... we would lack jurisdiction. ... The jurisdiction-stripping provision ... only precludes us from reviewing 'any determination' with respect to the extraordinary-circumstances exception, " and it is "the failure to make a determination" which can be reviewed. (at 1039–40). But cf. Lanza v. Ashcroft, 389 F.3d 917, 921 (9th*

Cir. 2004) (A respondent's misunderstanding of the law does not justify the extraordinary circumstance requirement: "Lanza claimed she had no need to apply for asylum because she thought she would be allowed to remain in the US through a spousal petition").

> ***Korablina v. INS*, 158 F.3d 1038 (9th Cir. 1998) (A73-973-087)**; *reversing BIA's denial of asylum upon finding past persecution and eligibility for withholding; remanding for discretionary grant of asylum; TROTT; distinguished by Nagoulko v. INS, 333 F.3d 1012 (9th Cir. 2003); Mansour v. Ashcroft, 390 F.3d 667 (9th Cir. Dec. 6, 2004).*

Persecution/ Discrimination; Of Family; Threats; Physical Harm. *Jewish citizen of Ukraine suffered "persecution, " not mere "discrimination, " and thus established prima facie eligibility for asylum; citizen witnessed violent attacks by ultra-nationalists against Jews, she was tied to chair with noose around her neck and threatened with death, and, soon after she left Ukraine, her husband and daughter were attacked by persons who alluded to fact that they had been unable to find her.*
Withholding of Deporation/ Granted. *Alien was eligible for withholding of deportation, inasmuch as clear probability of persecution on basis of her Jewish heritage would exist if she were to return to Ukraine; members of alien's family were severely beaten on account of their Jewish heritage soon after she left Ukraine, with specific threats made regarding her absence, and alien submitted numerous articles demonstrating that discrimination, harassment, and violence against Jews continued in Ukraine.*
Unable or Unwilling to Control/ Private Agent. *"Persecution may be found by cumulative, specific instances of violence and harassment toward an individual and her family members not only by the government, but also by a group the government declines to control. Singh v. INS, 94 F.3d 1353, 1358 (9th Cir. 1996) (citing Shirazi-Parsa v. INS, 14 F.3d 1424, 1428 (9th Cir. 1994)). 'Discrimination, harassment, and violence by groups that the government is unwilling or unable to control can also constitute persecution.' Id. at 1359 (citing Arteaga v. INS, 836 F.2d 1227, 1231 (9th Cir. 1988)). 'Non-governmental groups need not file articles of incorporation before they can be capable of persecution.' A single isolated incident may not 'rise to the level of persecution, [but] the cumulative effect of several incidents may constitute persecution.' Id.; see Sangha v. INS, 103 F.3d 1482, 1487 (9th Cir. 1997)." (at 1044).*

Yemen

Almaghzar v. Gonzales, 457 F.3d 915 (9th Cir. 2006)

***Almaghzar v. Gonzales*, 457 F.3d 915 (9th Cir. 2006);** *affirming a denial of relief for a citizen of Yemen; The respondent had been convicted of a drug trafficking aggravated felony. The court determined that it did not have jurisdiction to consider whether he had been convicted of a particularly serious crime, thus rendering him ineligible for asylum or withholding of removal. The decision primarily speaks to the claim for CAT relief. The respondent was found not credible. He asserted various due process arguments with regard to the consideration of his evidence and the conduct of the IJ. Although the respondent was discredited, his documentation was not.; GOULD. There was a lengthy and vigorous dissent by FISHER.*

CAT/ Independent Evaluation Required. *The majority decision has an extensive discussion of Kamalthas v. INS, 251 F.3d 1279 (9th Cir. 2001). It summarized that case as follows: "Because the elements of a CAT claim are different from a claim for asylum, the Kamalthus court held that the BIA erred in relying on its previous adverse credibility determination in refusing to consider documentary evidence of torture . . . ." Even though "the IJ did not specifically discuss the documentary evidence in his oral decision, " his statement that he "has considered all of the evidence, " was sufficient to comply with his obligation to do so.*

Topical Index

Persecution

Pro Se Applicant

Protected Grounds

//Humanitarian Asylum, see Past Persecution
//REAL ID Act, see Credibility